

## PUBLICATION UPDATE

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# Ohio Jury Instructions— Civil

Publication 4346

Release 22S3

December 2022

### HIGHLIGHTS

**This release includes revisions to the following:**

- User's Guide
- Chapter CV 429 — Assault, Battery, Infliction of Serious Emotional Distress
- Chapter CV 449 — Fraud
- Chapter CR 413 — Issues
- Chapter CR 417 — Definitions
- Chapter CR 421 — Defenses
- Chapter CR 505 — Kidnaping and Extortion
- Chapter CR 509 — Arson and Related Offenses
- Chapter CR 511 — Robbery, Burglary and Trespass
- Chapter CR 517 — Offenses Against the Public Peace

- Chapter CR 521 — Offenses Against Justice and Public Administration
- Chapter CR 523 — Conspiracy, Attempt, and Complicity; Weapons Control

**Chapter CV 429** replaces one instruction on civil assault and one instruction on civil battery.

**Chapter CV 449** includes one revised instruction on fraud and one revised instruction on caveat emptor in real estate sales; deletes one instruction on each of the following: types of representations not fraudulent; expert expressions of opinion; duty to investigate, inspect; duty to speak—partial disclosure; caveat emptor in real estate sales; damages; and conclusion.

**Chapter CR 413** replaces one in-

struction on time, venue.

**Chapter CR 417** includes one revised instruction on cause; natural consequences and one revised instruction on other causes; intervening causes.

**Chapter CR 421** replaces one instruction on self-defense, defense of residence—use of non-deadly force R.C. 2901.05; one instruction on defense of another—use of non-deadly force R.C. 2901.05; one instruction on self-defense against danger of death or great bodily harm—use of deadly force R.C. 2901.05; and one instruction on defense of another against danger of death or great bodily harm—use of deadly force R.C. 2901.05.

**Chapter CR 505** revises one instruction on trafficking in persons R.C. 2905.32; and adds one new

instruction on trafficking in persons R.C. 2905.32.

**Chapter CR 509** retires one instruction on criminal mischief R.C. 2902.07; and replaces one instruction on criminal mischief R.C. 2902.07.

**Chapter CR 511** includes one revised instruction on criminal trespass R.C. 2911.21, and one revised instruction on aggravated trespass R.C. 2911.211.

**Chapter CR 517** replaces one instruction on making false alarms R.C. 2917.32.

**Chapter CR 521** includes on revised instruction on retaliation R.C. 2921.05 .

**Chapter CR 523** revises one instruction on carrying concealed weapons R.C. 2923.12; and adds one new instruction on Carrying concealed weapons R.C. 2923.12.



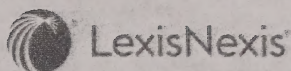
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Publication 4346 Release 22S3CIV

December 2022

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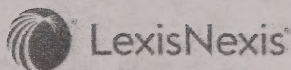
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# INSTRUCTIONS TO THE JURY

The first duty of the jury is to listen to the evidence.

## THE EVIDENCE

The evidence is the basis of the verdict.

The evidence is the basis of the verdict.

The evidence is the basis of the verdict.

The evidence is the basis of the verdict.

THE VERDICT

The jury must reach a verdict on the basis of the evidence.

The jury must reach a verdict on the basis of the evidence.

The jury must reach a verdict on the basis of the evidence.

The jury must reach a verdict on the basis of the evidence.

THE VERDICT



# OHIO JURY INSTRUCTIONS

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*A collection of STANDARD JURY  
INSTRUCTIONS in civil and criminal  
cases prepared by the Jury Instructions  
Committee of the Ohio Judicial  
Conference.*

CIVIL INSTRUCTIONS  
GENERAL  
SPECIAL TOPICS

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# **PREFACE TO OHIO JURY INSTRUCTIONS**

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This preface introduces a new revised edition of the Ohio Jury Instructions (OJI) reorganized into self-contained civil and criminal volumes. The former Volume 1 "General Instructions" has been eliminated. Applicable general instructions are included in the civil and criminal volumes. There is one civil volume, now organized by general subject matter areas, and one criminal volume; however, there are three binders. The criminal volume is contained in two binders with a separate tab for "Traffic" offenses.

The purpose of the reorganization is to simplify use of OJI by judges and practitioners. Users will no longer have to switch back and forth between the current Volume 1 "General Instructions" and the substantive instructions contained in the remaining volumes. Also, the numbering of all instructions has been revised and simplified. Instructions will now be identified as "CV"(Civil) and "CR"(Criminal). For example, current 4 OJI 503.01, dealing with Aggravated Murder, becomes CR 503.01. A "Correlation Table" is included in each volume containing previous and new section numbers. Both volumes have newly designed, slightly larger loose-leaf binders. The format of individual instructions has not changed.

## **COMMENT**

These first two paragraphs summarize the current reorganization. The balance of the preface provides historical perspective.

Ohio Jury Instructions, commonly called "OJI", was originally the project of Judges Robert L. McBride and Eugene R. McNeill. Its purpose was to present, in the same place in a single set of books, the instructions prepared by judges along with specific examples of such instructions, as well as others that were given in actual cases. The project was a joint effort of the Ohio Judicial Conference and the Ohio Common Pleas Judges Association. It was believed that the Bench and the Bar of Ohio should have the benefit, as well as the economy and convenience, of having all jury instruction material in one place in a single set of books. The jury instruction committee was composed exclusively of judges. In the event that the Committee was unable to develop a "standard" instruction, instructions were provided from individual cases. In theory, this method of combined presentation permitted the Committee to take the time required to develop its "standard" material through provisional drafts and experimental use prior to publication. The consensus among OJI Committee members was that the work of an individual judge would always be helpful until such time as "standard" instructions were developed.

Then, as now, the copyright was owned by the Ohio Judicial Conference, thereby providing for the permanent supervision by the judiciary of the development and publication of the OJI jury instructions.

It was the hope of all parties involved in 1958 that the Ohio Jury Instructions (OJI) would be helpful to the Bench and to the Bar and that the usefulness of the work would improve over the years with the continued cooperation of those interested in the instructional administration of the judicial system in the State of Ohio.

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## PREFACE TO OHIO JURY INSTRUCTIONS

### COMMENT

Drawn from "THE NEW OJI" by Robert L. McBride, Chairman, and Eugene R. McNeill, Vice Chairman.

In 1960, a "*Standard Civil Outline—Negligence*" was released. A companion criminal outline followed in 1962. The responsibility for publication of the instructions was assigned to the Ohio Judicial Conference to relieve the Ohio Common Pleas Judges Association of the printing, sale and distribution of the material.

A standard or pattern jury instruction is a brief, accurate, and complete statement in simple and understandable language covering a single situation, purpose, or point of law. Interest and comprehension by the jury are the first considerations. Technical expressions of decision, partisan language, and references to evidence are eliminated. Exceptional situations are set out separately for use when required by special facts. The Committee recognizes the necessity for direct and simple English. "A court in considering the propriety of any jury instruction must always bear in mind that the purpose of the jury instruction is to clarify the issues and the jury's position in the case. It must be remembered that juries are composed of ordinary people on the street, not trained grammarians, and that fine distinctions in the meaning of words or phrases are not ordinarily recognized by the average layperson. Thus, in considering the propriety of any instruction, the meaning of the words used in the instruction must be thought of in their common meaning to the layperson and not what such words mean to the grammarian or to the trained legal mind." *Balm v. Pittsburgh & Lake Erie RR. Co.* (1966), 6 Ohio St.2d 192.

### COMMENT

Drawn from *Preface to Volume I—1968*.

Three types of instruction appeared in OJI: (1) the "standard" or "pattern" instruction, though not necessarily titled as such; (2) the "approved" instruction, which is an instruction found in a particular case, and (3) the "new" instruction, which is a pattern instruction recommended by the Committee, but which has not yet withstood the test of time. OJI no longer uses these titles.

### COMMENT

Drawn from *Preface to Volume I—1983*.

In January 1987, the Ohio Jury Instructions Committee reorganized itself and adopted a plan for the revision of the civil instructions. Under the reorganization, the Committee consisted of an editorial board composed of trial and appellate judges with final approval of all material to be published in OJI, and the writing committees appointed ad hoc to draft new material and revisions. The Board also employed a law professor as an editorial consultant, whose task was to review all drafts, to evaluate their accuracy and scope, and to assure conformity with the Committee's Style Manual. The writing committees were composed of experienced and knowledgeable persons from the judicial, practicing, and academic branches of the profession, under the supervision of a member of the Editorial Board.

It was during this phase in the development of OJI that the use of Comments was broadened to advise OJI users of many matters deemed to be of major significance. During this phase, the



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## ***PREFACE TO OHIO JURY INSTRUCTIONS***

Committee designated as “PROVISIONAL” those instructions published to be of assistance to the Bench and Bar of Ohio, but (of necessity) without specific judicial approval. OJI no longer designates instructions as “PROVISIONAL”. During this general time period, a software version of OJI became available for various personal computers.

### **COMMENT**

Drawn from “*Preface to Ohio Jury Instructions—1993.*”

In the words of former Chair Robert B. Ford, “ever shorter, ever plainer, ever fairer, this is the mission of OJI.” Although it is easy to state the goal, it is difficult to attain it. In Ohio, pattern jury instructions are not “pre-approved” by appellate courts. Therefore, it is sometimes difficult to use “plain English” because the Committee is required to use statutory and case law language in drafting instructions. The law is also evolving, and the ever-increasing number of statutes and cases constantly increases the volume of the Committee’s work.

The Committee has divided into Civil and Criminal Subcommittees and developed an informal protocol in order to meet the need for more and more instructions. The Ohio State Bar Association and its jury instructions committee have joined with the Ohio Judicial Conference in the ongoing effort to enhance this product. The combined effort has already generated numerous quality instructions, both civil and criminal. Multiple drafting committees using the talents of both Bench and Bar are now in place to draft and modify instructions. Other such drafting committees will be formed as needed.

Enhanced technology has also found its way into OJI. Most, if not all, of the OJI Committee’s members have laptop computers to aid their efforts. Use of projection and internet technology at subcommittee meetings has greatly enhanced the editing process. At present, OJI is published in print and CD versions by LexisNexis and on-line versions by LexisNexis, Westlaw, and Casemaker, thereby maximizing user access.

And so it goes . . . evolving, hopefully improving . . .





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A COMPLETE SYNOPSIS FOR EACH CHAPTER APPEARS AT  
THE BEGINNING OF THE CHAPTER

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CV 101.03	Instruction at every step of the trial <i>[Rev. 12-1-07]</i>
CV 101.05	The role of the judge <i>[Rev. 12-1-07]</i>
CV 101.07	Time of delivery <i>[Rev. 12-1-07]</i>
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CV 101.11	Tests for effectiveness <i>[Rev. 12-1-07]</i>
CV 101.13	Record required <i>[Rev. 12-1-07]</i>
CV 101.15	An appeal on instructions <i>[Rev. 12-1-07]</i>
CV 101.17	Error and prejudice <i>[Rev. 12-1-07]</i>
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1.01	OJI-CV 101.01
1.03	OJI-CV 101.03
1.05	OJI-CV 101.05
1.07	OJI-CV 101.07
1.09	OJI-CV 101.09
1.11	OJI-CV 101.11
1.13	OJI-CV 101.13
1.15	OJI-CV 101.15
1.17	OJI-CV 101.17
1.19	OJI-CV 101.19
1.21	OJI-CV 101.21
1.23	OJI-CV 101.23
1.25	OJI-CV 101.25
1.27	OJI-CV 101.27
1.29	OJI-CV 101.29
1.31	OJI-CV 101.31
1.33	OJI-CV 101.33
1.35	OJI-CV 101.35
1.37	OJI-CV 101.37
1.39	OJI-CV 101.39
1.41	OJI-CV 101.41
1.43	OJI-CV 101.43
1.45	OJI-CV 101.45
1.47	OJI-CV 101.47
1.49	OJI-CV 101.49
1.51	OJI-CV 101.51
1.53	OJI-CV 101.53
1.55	OJI-CV 101.55
1.57	OJI-CV 101.57
1.59	OJI-CV 101.59
1.61	OJI-CV 101.61
1.63	OJI-CV 101.63
1.65	OJI-CV 101.65
1.67	OJI-CV 101.67
1.69	OJI-CV 101.69
1.71	OJI-CV 101.71
1.73	OJI-CV 101.73
1.75	OJI-CV 101.75
1.77	OJI-CV 101.77
1.79	OJI-CV 101.79
1.81	OJI-CV 101.81
1.83	OJI-CV 101.83

Previous Instruction Number	New Edition Instruction Number
1.85	OJI-CV 101.85
1.87	OJI-CV 101.87
2.01	OJI-CV 301.01
2.10	OJI-CV 301.03
2.20	OJI-CV 301.05
2.21	OJI-CV 301.07
2.25	OJI-CV 309.13
2.50	OJI-CV 309.15
2.51	OJI-CV 309.17
2.52	OJI-CV 301.09
2.53	OJI-CV 301.11
2.60	OJI-CV 309.05
2.61	OJI-CV 309.19
2.62	OJI-CV 309.21
2.65	OJI-CV 309.23
2.67	OJI-CV 309.25
3.01	OJI-CV 311.01
3.05	OJI-CV 303.01
3.10	OJI-CV 303.03
3.50	OJI-CV 303.05
3.75	OJI-CV 303.07
5.10	OJI-CV 305.01
5.13	OJI-CV 309.01
5.15	OJI-CV 309.03
5.20	OJI-CV 305.03
5.30	OJI-CV 305.05
5.31	OJI-CV 309.07
5.50	OJI-CV 309.09
5.70	OJI-CV 309.11
5.92	OJI-CV 311.09
7.10	OJI-CV 401.01
7.11	OJI-CV 401.03
7.12	OJI-CV 401.05
7.13	OJI-CV 401.07
7.14	OJI-CV 401.09
7.15	OJI-CV 401.11
7.17	OJI-CV 401.13
7.18	OJI-CV 401.15
7.19	OJI-CV 401.17
7.20	OJI-CV 401.19
7.25	OJI-CV 401.21
7.26	OJI-CV 401.23
7.27	OJI-CV 401.25
7.28	OJI-CV 401.27



<b>Previous Instruction Number</b>	<b>New Edition Instruction Number</b>
7.29	OJI-CV 401.29
7.30	OJI-CV 401.31
7.35	OJI-CV 401.33
7.70	OJI-CV 401.35
7.71	OJI-CV 401.37
7.80	OJI-CV 401.39
7.90	OJI-CV 401.41
9.13 (claims arising on and after 4/9/03)	OJI-CV 403.01 (claims arising on and after 4/9/03)
9.13 (claims arising before 1/5/88)	OJI-CV 403.01 (claims arising before 1/5/88)
9.13 (claims arising on and after 1/5/88 but before 4/9/03)	OJI-CV 403.01 (claims arising on and after 1/5/88 but before 4/9/03)
9.15 (claims arising on and after 4/9/03)	OJI-CV 403.03 (claims arising on and after 4/9/03)
9.15 (claims arising before 1/5/88)	OJI-CV 403.03 (claims arising before 1/5/88)
9.15 (claims arising on and after 1/5/88 but before 4/9/03)	OJI-CV 403.03 (claims arising on and after 1/5/88 but before 4/9/03)
9.17 (claims arising on and after 4/9/03)	OJI-CV 403.05 (claims arising on and after 4/9/03)
9.17 (claims arising on and after 1/5/88 but before 4/9/03)	OJI-CV 403.05 (claims arising on and after 1/5/88 but before 4/9/03)
9.19 (claims arising on and after 4/9/03)	OJI-CV 403.07 (claims arising on and after 4/9/03)
9.19 (claims arising on and after 1/5/88 but before 4/9/03)	OJI-CV 403.07 (claims arising on and after 1/5/88 but before 4/9/03)
9.50	OJI-CV 403.09
9.60	OJI-CV 403.11
9.70	OJI-CV 403.13
11.10	OJI-CV 405.01
11.20	OJI-CV 405.03
11.30	OJI-CV 405.05
13.01	OJI-CV 617.01
13.03	OJI-CV 617.03
13.05	OJI-CV 617.05
13.07	OJI-CV 617.07
13.09	OJI-CV 617.09
13.11	OJI-CV 617.11
13.13	OJI-CV 617.13
13.15	OJI-CV 617.15
13.17	OJI-CV 617.17
13.19	OJI-CV 617.19
13.21	OJI-CV 617.21
15.10	OJI-CV 423.01

Previous Instruction Number	New Edition Instruction Number
15.11	OJI-CV 423.03
15.30	OJI-CV 423.05
15.31	OJI-CV 423.07
15.50	OJI-CV 423.09
15.51	OJI-CV 423.11
15.52	OJI-CV 423.13
15.70	OJI-CV 423.15
17.00	OJI-CV 311.03
17.05	OJI-CV 311.05
17.11	OJI-CV 311.07
17.13	OJI-CV 311.11
17.15	OJI-CV 311.13
17.16	OJI-CV 311.15
17.20	OJI-CV 311.17
17.30	OJI-CV 311.19
17.40	OJI-CV 311.21
17.50	OJI-CV 311.23
17.60	OJI-CV 311.25
17.70	OJI-CV 311.27
17.90	OJI-CV 311.29
21.10	OJI-CV 313.01
21.20	OJI-CV 313.03
21.30	OJI-CV 313.05
23.01 (claims arising before 4/9/03)	OJI-CV 315.01 (claims arising before 4/9/03)
23.01 (claims arising on and after 4/7/05)	OJI-CV 315.01 (claims arising on and after 4/7/05)
23.01 (claims arising on and after 4/9/03 but before 4/7/05)	OJI-CV 315.01 (claims arising on and after 4/9/03 but before 4/7/05)
23.02	OJI-CV 315.03
23.04	OJI-CV 315.05
23.05	OJI-CV 315.07
23.07	OJI-CV 315.09
23.08	OJI-CV 315.11
23.09	OJI-CV 315.13
23.10	OJI-CV 315.15
23.20	OJI-CV 315.17
23.40	OJI-CV 315.19
23.41	OJI-CV 315.21
23.42	OJI-CV 315.23
23.43	OJI-CV 315.25
23.50	OJI-CV 315.27
23.55	OJI-CV 315.29
23.56	OJI-CV 315.31

Previous Instruction Number	New Edition Instruction Number
23.57	OJI-CV 315.33
23.60	OJI-CV 315.35
23.71 (claims arising on and after 1/5/88 but before 4/7/05)	OJI-CV 315.37 (claims arising on and after 1/5/88 but before 4/7/05)
23.71 (claims arising on and after 4/7/05)	OJI-CV 315.37 (claims arising on and after 4/7/05)
23.72	OJI-CV 315.39
23.75	OJI-CV 315.41
23.76	OJI-CV 315.43
23.77	OJI-CV 315.45
23.90	OJI-CV 315.47
23.91	OJI-CV 315.49
23.92	OJI-CV 315.51
23.93	OJI-CV 315.53
25.10	OJI-CV 317.01
25.20	OJI-CV 317.03
25.30	OJI-CV 317.05
25.40	OJI-CV 317.07
27.01	OJI-CV 319.01
27.05	OJI-CV 319.03
27.10	OJI-CV 319.05
27.50	OJI-CV 319.07
200.01	OJI-CV 435.01
200.03	OJI-CV 435.03
200.05	OJI-CV 435.05
217.01	OJI-CV 409.01
217.03	OJI-CV 409.03
217.05	OJI-CV 409.05
217.07	OJI-CV 409.07
219.01	OJI-CV 429.01
219.02	OJI-CV 429.03
219.03	OJI-CV 429.05
219.05	OJI-CV 429.07
219.07	OJI-CV 429.09
219.09	OJI-CV 429.11
225.01	OJI-CV 411.01
225.02	OJI-CV 411.03
225.03	OJI-CV 411.05
225.04	OJI-CV 411.07
225.05	OJI-CV 411.09
225.07	OJI-CV 411.11
225.08	OJI-CV 411.13
225.12	OJI-CV 411.15
225.13	OJI-CV 411.17



Previous Instruction Number	New Edition Instruction Number
225.131	OJI-CV 411.19
225.14	OJI-CV 411.21
225.15	OJI-CV 411.23
225.19	OJI-CV 411.25
225.20	OJI-CV 411.27
225.201	OJI-CV 411.29
225.202	OJI-CV 411.31
225.21	OJI-CV 411.33
225.22	OJI-CV 411.35
225.25	OJI-CV 411.37
225.251	OJI-CV 411.39
225.26	OJI-CV 411.41
225.27	OJI-CV 411.43
225.28	OJI-CV 411.45
225.29	OJI-CV 411.47
225.30	OJI-CV 411.49
225.31	OJI-CV 411.51
225.32	OJI-CV 411.53
225.33	OJI-CV 411.55
225.34	OJI-CV 411.57
225.35	OJI-CV 411.59
225.36	OJI-CV 411.61
225.37	OJI-CV 411.63
225.38	OJI-CV 411.65
225.39	OJI-CV 411.67
225.40	OJI-CV 411.69
225.41	OJI-CV 411.71
225.42	OJI-CV 411.73
225.43	OJI-CV 411.75
225.431	OJI-CV 411.77
225.44	OJI-CV 411.79
225.441	OJI-CV 411.81
225.45	OJI-CV 411.83
225.451	OJI-CV 411.85
225.452	OJI-CV 411.87
225.46	OJI-CV 411.89
225.47	OJI-CV 411.91
225.48	OJI-CV 411.93
225.481	OJI-CV 411.95
225.49	OJI-CV 411.97
225.50	OJI-CV 411.99
225.51	OJI-CV 411.101
225.52	OJI-CV 411.103
225.66	OJI-CV 411.105

Previous Instruction Number	New Edition Instruction Number
227.02	OJI-CV 411.107
227.021	OJI-CV 411.109
227.03	OJI-CV 411.111
229.01	OJI-CV 629.01
229.02	OJI-CV 629.03
239.01	OJI-CV 605.01
239.03	OJI-CV 605.03
239.05	OJI-CV 605.05
239.07	OJI-CV 605.07
239.09	OJI-CV 605.09
245.01	OJI-CV 407.01
245.03	OJI-CV 407.03
245.05	OJI-CV 407.05
245.07	OJI-CV 407.07
245.09	OJI-CV 407.09
245.11	OJI-CV 407.11
245.13	OJI-CV 407.13
245.15	OJI-CV 407.15
245.17	OJI-CV 407.17
245.19	OJI-CV 407.19
245.21	OJI-CV 407.21
245.23	OJI-CV 407.23
247.01	OJI-CV 713.01
252.01	OJI-CV 447.01
253.01	OJI-CV 501.01
253.03	OJI-CV 501.03
253.05	OJI-CV 501.05
253.07	OJI-CV 501.07
253.09	OJI-CV 501.09
253.11	OJI-CV 501.11
253.13	OJI-CV 501.13
253.15	OJI-CV 501.15
253.17	OJI-CV 501.17
253.19	OJI-CV 501.19
253.21	OJI-CV 501.21
253.23	OJI-CV 501.23
253.24	OJI-CV 501.25
253.25	OJI-CV 501.27
253.26	OJI-CV 501.29
253.27	OJI-CV 501.31
253.29	OJI-CV 501.33
253.31	OJI-CV 501.35
253.33	OJI-CV 501.37
253.35	OJI-CV 501.39

Previous Instruction Number	New Edition Instruction Number
255.01	OJI-CV 521.01
255.03	OJI-CV 521.03
257.01	OJI-CV 625.01
257.03	OJI-CV 625.03
257.05	OJI-CV 625.05
257.07	OJI-CV 625.07
264.01	OJI-CV 431.01
264.03	OJI-CV 431.03
264.05	OJI-CV 431.05
264.07	OJI-CV 431.07
265.01	OJI-CV 419.01
265.02	OJI-CV 419.03
266.01	OJI-CV 533.01
266.03	OJI-CV 533.03
266.05	OJI-CV 533.05
266.07	OJI-CV 533.07
266.09	OJI-CV 533.09
266.11	OJI-CV 533.11
266.15	OJI-CV 533.13
266.17	OJI-CV 533.15
266.19	OJI-CV 533.17
266.21	OJI-CV 533.19
266.23	OJI-CV 533.21
266.25	OJI-CV 533.23
266.27	OJI-CV 533.25
271.01	OJI-CV 453.01
271.03	OJI-CV 453.03
301.01	OJI-CV 609.01
301.03	OJI-CV 609.03
301.05	OJI-CV 609.05
301.07	OJI-CV 609.07
301.09	OJI-CV 609.09
301.11	OJI-CV 609.11
301.13	OJI-CV 609.13
301.15	OJI-CV 609.15
301.17	OJI-CV 609.17
301.19	OJI-CV 609.19
301.21	OJI-CV 609.21
301.23	OJI-CV 609.23
302.01	OJI-CV 537.01
302.03	OJI-CV 453.05
302.05 (claims arising before 4/09/03)	OJI-CV 537.05 (claims arising before 4/09/03)



Previous Instruction Number	New Edition Instruction Number
302.05 (claims arising on and after 4/7/05)	OJI-CV 537.05 (claims arising on and after 4/7/05)
302.05 (claims arising on and after 4/9/03 but before 4/7/05)	OJI-CV 537.05 (claims arising on and after 4/9/03 but before 4/7/05)
302.07	OJI-CV 537.07
302.09	OJI-CV 537.09
302.11	OJI-CV 537.11
302.13	OJI-CV 537.13
302.15	OJI-CV 537.15
302.17	OJI-CV 537.17
305.01	OJI-CV 437.01
307.01	OJI-CV 449.01
307.03	OJI-CV 449.03
307.05	OJI-CV 449.05
307.07	OJI-CV 449.07
307.09	OJI-CV 449.09
307.11	OJI-CV 449.11
307.13	OJI-CV 449.13
307.15	OJI-CV 449.15
307.17	OJI-CV 449.17
309.01	OJI-CV 441.01
309.03	OJI-CV 441.03
309.05	OJI-CV 441.05
309.07	OJI-CV 441.07
312.01	OJI-CV 425.01
312.03	OJI-CV 425.03
312.05	OJI-CV 425.05
312.07	OJI-CV 425.07
312.09	OJI-CV 425.09
312.11	OJI-CV 425.11
312.13	OJI-CV 425.13
312.15	OJI-CV 425.15
313.01	OJI-CV 637.01
313.03	OJI-CV 637.03
313.05	OJI-CV 637.05
313.07	OJI-CV 637.07
313.09	OJI-CV 637.09
313.11	OJI-CV 637.11
315.01	OJI-CV 509.01
315.02	OJI-CV 509.03
315.03	OJI-CV 509.05
315.04	OJI-CV 509.07
317.01	OJI-CV 701.01
317.03	OJI-CV 701.03

Previous Instruction Number	New Edition Instruction Number
317.05	OJI-CV 701.05
317.07	OJI-CV 701.07
317.09	OJI-CV 701.09
317.11	OJI-CV 701.11
317.13	OJI-CV 701.13
317.15	OJI-CV 701.15
319.01	OJI-CV 415.01
319.03	OJI-CV 415.03
319.05	OJI-CV 415.05
319.07	OJI-CV 415.07
319.09	OJI-CV 415.09
319.11	OJI-CV 415.11
323.01	OJI-CV 709.01
323.03	OJI-CV 709.03
323.05	OJI-CV 709.05
323.07	OJI-CV 709.07
323.09	OJI-CV 709.09
323.11	OJI-CV 709.11
323.13	OJI-CV 709.13
323.15	OJI-CV 709.15
323.17	OJI-CV 709.17
323.19	OJI-CV 709.19
323.21	OJI-CV 709.21
323.23	OJI-CV 709.23
323.25	OJI-CV 709.25
323.27	OJI-CV 709.27
323.29	OJI-CV 709.29
323.31	OJI-CV 709.31
323.33	OJI-CV 709.33
323.35	OJI-CV 709.35
323.37	OJI-CV 709.37
323.39	OJI-CV 709.39
323.41	OJI-CV 709.41
323.43	OJI-CV 709.43
323.45	OJI-CV 709.45
323.47	OJI-CV 709.47
323.49	OJI-CV 709.49
323.51	OJI-CV 709.51
323.53	OJI-CV 709.53
323.55	OJI-CV 709.55
323.57	OJI-CV 709.57
323.59	OJI-CV 709.59
323.61	OJI-CV 709.61
323.63	OJI-CV 709.63

Previous Instruction Number	New Edition Instruction Number
323.65	OJI-CV 709.65
325.01	OJI-CV 413.01
325.03	OJI-CV 413.03
325.05	OJI-CV 413.05
325.07	OJI-CV 413.07
325.09	OJI-CV 413.09
325.11	OJI-CV 413.11
327.01	OJI-CV 613.01
327.03	OJI-CV 613.03
327.05	OJI-CV 613.05
327.07	OJI-CV 613.07
327.11	OJI-CV 613.09
327.13	OJI-CV 613.11
327.15	OJI-CV 613.13
327.17	OJI-CV 613.15
327.19	OJI-CV 613.17
327.21	OJI-CV 613.19
327.23	OJI-CV 613.21
327.25	OJI-CV 613.23
327.27	OJI-CV 613.25
327.29	OJI-CV 613.27
327.31	OJI-CV 613.29
327.33	OJI-CV 613.31
327.35	OJI-CV 613.33
329.01	OJI-CV 529.01
330.01	OJI-CV 439.01
330.03	OJI-CV 439.03
330.05	OJI-CV 439.05
330.07	OJI-CV 439.07
330.09	OJI-CV 439.09
331.01	OJI-CV 417.01
331.03	OJI-CV 417.03
331.05	OJI-CV 417.05
331.07	OJI-CV 417.07
331.09	OJI-CV 417.09
331.11	OJI-CV 417.11
331.13	OJI-CV 417.13
331.15	OJI-CV 417.15
331.17	OJI-CV 417.17
331.19	OJI-CV 417.19
333.01	OJI-CV 421.01
333.03	OJI-CV 421.03
333.05	OJI-CV 421.05
333.07	REMOVED



Previous Instruction Number	New Edition Instruction Number
345.01	OJI-CV 621.01
345.03	OJI-CV 621.03
345.05	OJI-CV 621.05
345.07	OJI-CV 621.07
345.09	OJI-CV 621.09
345.11	OJI-CV 621.11
345.13	OJI-CV 621.13
348.01	OJI-CV 705.01
348.03(A)	OJI-CV 705.03
348.03(B)	OJI-CV 705.05
348.07	OJI-CV 705.07
348.09	OJI-CV 705.09
348.11	OJI-CV 705.11
348.13	OJI-CV 705.13
348.15	OJI-CV 705.15
349.01	OJI-CV 433.01
349.03	OJI-CV 433.03
349.05	OJI-CV 433.05
349.07	OJI-CV 433.07
349.09	OJI-CV 433.09
349.11	OJI-CV 433.11
349.13	OJI-CV 433.13
351.01	OJI-CV 451.01
351.03	OJI-CV 451.03
351.05	OJI-CV 451.05
351.07	OJI-CV 451.07
351.09	OJI-CV 451.09
351.11	OJI-CV 451.11
351.13	OJI-CV 451.13
351.15	OJI-CV 451.15
351.17	OJI-CV 451.17
351.19	OJI-CV 451.19
351.21	OJI-CV 451.21
351.23	OJI-CV 451.23
354.01	OJI-CV 601.01
354.03	OJI-CV 601.03
354.05	OJI-CV 601.05
354.07	OJI-CV 601.07
354.09	OJI-CV 601.09
355.01	OJI-CV 443.01
356.01	OJI-CV 445.01
356.03	OJI-CV 445.03
356.05	OJI-CV 445.05
356.07	OJI-CV 445.07

Previous Instruction Number	New Edition Instruction Number
356.09	OJI-CV 445.09
356.11	OJI-CV 445.11
356.13	OJI-CV 445.13
356.15	OJI-CV 445.15
356.17	OJI-CV 445.17
356.19	OJI-CV 445.19
356.21	OJI-CV 445.21
356.23	OJI-CV 445.23
356.25	OJI-CV 445.25
359.01	OJI-CV 513.01
359.03	OJI-CV 513.03
359.05	OJI-CV 513.05
359.07	OJI-CV 513.07
359.09	OJI-CV 513.09
362.01	OJI-CV 505.01
362.03	OJI-CV 505.03
362.05	OJI-CV 505.05
362.07	OJI-CV 505.07
362.09	OJI-CV 505.09
362.11	OJI-CV 505.11
362.13	OJI-CV 505.13
362.15	OJI-CV 505.15
362.17	OJI-CV 505.17
362.19	OJI-CV 505.19
362.21	OJI-CV 505.21
362.23	OJI-CV 505.23
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503.14 (offenses committed on and after 9/6/96)	OJI-CR 503.14 (offenses committed on and after 9/6/96)
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503.35	OJI-CR 503.35
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503.211 (offenses committed on and after 3/10/00)	OJI-CR 503.211 (offenses committed on and after 3/ 10/00 but before 1/1/08) OJI-CR 503.211 (offenses committed on and after 1/1/ 08)
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505.01(A) (offenses committed on and after 7/1/96) [Rev. 1-20-07]	OJI-CR 505.01(A) (offenses committed on and after 7/1/96)
505.01(B) (offenses committed before 7/1/96)	OJI-CR 505.01(B) (offenses committed before 7/1/96)
505.01(B) (offenses committed on and after 7/1/96)	OJI-CR 505.01(B) (offenses committed on and after 7/1/96)
505.02 (offenses committed before 7/1/96)	OJI-CR 505.02 (offenses committed before 7/1/96)
505.02 (offenses committed on and after 7/1/96)	OJI-CR 505.02 (offenses committed on and after 7/1/96)
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505.04 (offenses committed before 7/1/96)	OJI-CR 505.04 (offenses committed before 7/1/96)
505.05 (offenses committed before 7/1/96)	OJI-CR 505.05
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507.02(A)(1) (offenses committed on and after 7/1/96 but before 3/10/98)	OJI-CR 507.02(A)(1) (offenses committed on and after 7/1/96 but before 3/10/98)
507.02(A)(1) (offenses committed on and after 3/10/98)	OJI-CR 507.02(A)(1) (offenses committed on and after 3/10/98)
507.02(A)(2) (offenses committed before 7/1/96)	OJI-CR 507.02(A)(2) (offenses committed before 7/1/96)
507.02(A)(2) (offenses committed on and after 7/1/96)	OJI-CR 507.02(A)(2) (offenses committed on and after 7/1/96)
507.03 (offenses committed before 7/1/96)	OJI-CR 507.03 (offenses committed before 7/1/96)
507.03 (offenses committed on and after 7/1/96)	OJI-CR 507.03 (offenses committed on and after 7/1/96)
507.04 (offenses committed before 7/1/96)	OJI-CR 507.04 (offenses committed before 7/1/96)
507.04 (offenses committed on and after 7/1/96)	OJI-CR 507.04 (offenses committed on and after 7/1/96)
507.05 (offenses committed before 7/1/96)	OJI-CR 507.05 (offenses committed before 7/1/96)
507.05 (offenses committed on and after 7/1/96 but before 3/10/98)	OJI-CR 507.05 (offenses committed on and after 7/1/96 but before 3/10/98)
507.05 (offenses committed on and after 3/10/98)	OJI-CR 507.05 (offenses committed on and after 3/10/98)
507.06 (offenses committed before 7/1/96)	OJI-CR 507.06 (offenses committed before 7/1/96)
507.06 (offenses committed on and after 7/1/96)	OJI-CR 507.06 (offenses committed on and after 7/1/96)
507.07 (offenses committed before 3/22/01)	OJI-CR 507.07 (offenses committed before 3/22/01)
507.07 (offenses committed on and after 3/22/01 but before 5/7/02)	OJI-CR 507.07 (offenses committed on and after 3/22/01 but before 5/7/02)
507.07 (offenses committed on and after 5/7/02 but before 7/31/03)	OJI-CR 507.07 (offenses committed on and after 5/7/02 but before 7/31/03)
507.07 (offenses committed on and after 7/31/03)	OJI-CR 507.07 (offenses committed on and after 7/31/03)



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507.08 (offenses committed on and after 1/30/98)	OJI-CR 507.08 (offenses committed on and after 1/30/98)
507.09 (offenses committed before 9/26/05)	OJI-CR 507.09 (offenses committed before 9/26/05)
507.09 (offenses committed on and after 9/26/05)	OJI-CR 507.09 (offenses committed on and after 9/26/05)
507.12(A)(1) (offenses committed before 9/3/96)	OJI-CR 507.12(A)(1) (offenses committed before 9/3/96)
507.12(A)(2) (offenses committed before 9/3/96)	OJI-CR 507.12(A)(2) (offenses committed before 9/3/96)
507.21 (offenses committed before 7/1/96)	OJI-CR 507.21 (offenses committed before 7/1/96)
507.21 (offenses committed on and after 7/1/96)	OJI-CR 507.21 (offenses committed on and after 7/1/96)
507.22 (offenses committed before 7/1/96)	OJI-CR 507.22 (offenses committed before 7/1/96)
507.22 (offenses committed on and after 7/1/96)	OJI-CR 507.22 (offenses committed on and after 7/1/96)
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507.25 (offenses committed before 7/1/96)	OJI-CR 507.25 (offenses committed before 7/1/96)
507.31 (offenses committed before 7/1/96)	OJI-CR 507.31 (offenses committed before 7/1/96)
507.31 (offenses committed on and after 7/1/96 but before 1/1/04)	OJI-CR 507.31 (offenses committed on and after 7/1/96 but before 1/1/04)
507.31 (offenses committed on and after 1/1/04)	OJI-CR 507.31 (offenses committed on and after 1/1/04)
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507.33	OJI-CR 507.33
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507.34(A) (offenses committed on and after 7/1/96)	OJI-CR 507.34(A) (offenses committed on and after 7/1/96)
507.34(B) (offenses committed before 7/1/96)	OJI-CR 507.34(B) (offenses committed before 7/1/96)
507.34(B) (offenses committed on and after 7/1/96)	OJI-CR 507.34(B) (offenses committed on and after 7/1/96)
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507.42 (offenses committed on and after 7/1/96)	OJI-CR 507.42 (offenses committed on and after 7/1/96)
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507.53(B)	OJI-CR 507.53(B)
507.53(C)	OJI-CR 507.53(C)

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507.72 (offenses committed on and after 1/1/97)	OJI-CR 507.72 (offenses committed on and after 1/1/97)
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507.241 (offenses committed on and after 7/1/96)	OJI-CR 507.241 (offenses committed on and after 7/1/96)
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507.321 (offenses committed on and after 7/1/96)	OJI-CR 507.321 (offenses committed on and after 7/1/96)
507.322 (offenses committed before 7/1/96)	OJI-CR 507.322 (offenses committed before 7/1/96)
507.322 (offenses committed on and after 7/1/96)	OJI-CR 507.322 (offenses committed on and after 7/1/96)
507.323 (offenses committed before 7/1/96)	OJI-CR 507.323 (offenses committed before 7/1/96)
507.323 (offenses committed on and after 7/1/96)	OJI-CR 507.323 (offenses committed on and after 7/1/96)
509.02 (offenses committed before 7/1/96)	OJI-CR 509.02 (offenses committed before 7/1/96)
509.02 (offenses committed on and after 7/1/96)	OJI-CR 509.02 (offenses committed on and after 7/1/96)
509.03 (offenses committed before 7/1/96)	OJI-CR 509.03 (offenses committed before 7/1/96)
509.03 (offenses committed on and after 7/1/96)	OJI-CR 509.03 (offenses committed on and after 7/1/96)
509.04 (offenses committed before 7/1/96)	OJI-CR 509.04 (offenses committed before 7/1/96)
509.04 (offenses committed on and after 7/1/96)	OJI-CR 509.04 (offenses committed on and after 7/1/96)
509.05(A) (offenses committed before 7/1/96)	OJI-CR 509.05(A) (offenses committed before 7/1/96)
509.05(A) (offenses committed on and after 7/1/96 but before 9/30/98)	OJI-CR 509.05(A) (offenses committed on and after 7/1/96 but before 9/30/98)
509.05(A) (offenses committed on and after 9/30/98)	OJI-CR 509.05(A) (offenses committed on and after 9/30/98)
509.05(B) (offenses committed before 7/1/96)	OJI-CR 509.05(B) (offenses committed before 7/1/96)
509.05(B) (offenses committed on and after 7/1/96 but before 9/30/98)	OJI-CR 509.05(B) (offenses committed on and after 7/1/96 but before 9/30/98)
509.05(B) (offenses committed on and after 9/30/98)	OJI-CR 509.05(B) (offenses committed on and after 9/30/98)
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509.05(C) (offenses committed on and after 9/30/98)	OJI-CR 509.05(C) (offenses committed on and after 9/30/98)
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509.05(D) (offenses committed on and after 7/1/96)	OJI-CR 509.05(D) (offenses committed on and after 7/1/96)
509.06 (offenses committed before 7/1/96)	OJI-CR 509.06 (offenses committed before 7/1/96)
509.06 (offenses committed on and after 7/1/96)	OJI-CR 509.06 (offenses committed on and after 7/1/96)
509.07 (offenses committed before 7/1/96)	OJI-CR 509.07 (offenses committed before 7/1/96)
509.07 (offenses committed on and after 7/1/96)	OJI-CR 509.07 (offenses committed on and after 7/1/96)
509.08 (offenses committed before 7/1/96)	OJI-CR 509.08 (offenses committed before 7/1/96)
509.08 (offenses committed on or after 7/1/96)	OJI-CR 509.08 (offenses committed on or after 7/1/96)
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509.23	OJI-CR 509.23
509.24	OJI-CR 509.24
511.01(A)	OJI-CR 511.01(A)
511.01(B)	OJI-CR 511.01(B)
511.02	OJI-CR 511.02
511.11	OJI-CR 511.11
511.12	OJI-CR 511.12
511.13(A)	OJI-CR 511.13(A)
511.13(B)	OJI-CR 511.13(B)
511.21	OJI-CR 511.21
511.31	OJI-CR 511.31
511.32	OJI-CR 511.32
511.211	OJI-CR 511.211
513.02 (offenses committed before 7/1/96)	OJI-CR 513.02 (offenses committed before 7/1/96)
513.02 (offenses committed on and after 7/1/96)	OJI-CR 513.02 (offenses committed on and after 7/1/96)
513.03 (offenses committed before 7/1/96)	OJI-CR 513.03 (offenses committed before 7/1/96)
513.03 (offenses committed on and after 7/1/96)	OJI-CR 513.03 (offenses committed on and after 7/1/96)
513.04 (offenses committed before 7/1/96)	OJI-CR 513.04 (offenses committed before 7/1/96)
513.04 (offenses committed on and after 7/1/96)	OJI-CR 513.04 (offenses committed on and after 7/1/96)



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513.11 (offenses committed before 7/1/96)	OJI-CR 513.11 (offenses committed before 7/1/96)
513.11 (offenses committed on and after 7/1/96)	OJI-CR 513.11 (offenses committed on and after 7/1/96)
513.21 (offenses committed before 7/1/96)	OJI-CR 513.21 (offenses committed before 7/1/96)
513.21 (offenses committed on and after 7/1/96)	OJI-CR 513.21 (offenses committed on and after 7/1/96)
513.31(A) (offenses committed before 7/1/96)	OJI-CR 513.31(A) (offenses committed before 7/1/96)
513.31(A) (offenses committed on and after 7/1/96)	OJI-CR 513.31(A)(offenses committed on and after 7/1/96)
513.31(B)	OJI-CR 513.31(B)
513.32 (offenses committed before 7/1/96)	OJI-CR 513.32 (offenses committed before 7/1/96)
513.32 (offenses committed on and after 7/1/96)	OJI-CR 513.32 (offenses committed on and after 7/1/96)
513.33 (offenses committed on and after 3/31/97)	OJI-CR 513.33 (offenses committed on and after 3/31/97)
513.34 (offenses committed on and after 3/31/97)	OJI-CR 513.34 (offenses committed on and after 3/31/97)
513.40	OJI-CR 513.40
513.41 (offenses committed before 7/1/96)	OJI-CR 513.41 (offenses committed before 7/1/96)
513.42 (offenses committed before 7/1/96)	OJI-CR 513.42 (offenses committed before 7/1/96)
513.42 (offenses committed on and after 7/1/96)	OJI-CR 513.42 (offenses committed on and after 7/1/96)
513.43 (offenses committed before 7/1/96)	OJI-CR 513.43 (offenses committed before 7/1/96)
513.43 (offenses committed on and after 7/1/96)	OJI-CR 513.43 (offenses committed on and after 7/1/96)
513.44	OJI-CR 513.44
513.45 (offenses committed before 7/1/96)	OJI-CR 513.45 (offenses committed before 7/1/96)
513.45 (offenses committed on and after 7/1/96)	OJI-CR 513.45 (offenses committed on and after 7/1/96)
513.46(A) (offenses committed before 10/29/95)	OJI-CR 513.46(A)(offenses committed before 10/29/95)
513.46(B) (offenses committed before 10/29/95)	OJI-CR 513.46(B) (offenses committed before 10/29/95)
513.46(B) (offenses committed on and after 9/26/96)	OJI-CR 513.46(B) (offenses committed on and after 9/26/96)
513.46(C) (offenses committed on and after 9/26/96)	OJI-CR 513.46(C) (offenses committed on and after 9/26/96)

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513.47 (offenses committed before 7/1/96)	OJI-CR 513.47 (offenses committed before 7/1/96)
513.47 (offenses committed on and after 7/1/96)	OJI-CR 513.47 (offenses committed on and after 7/1/96)
513.48 (offenses committed before 7/1/96)	OJI-CR 513.48 (offenses committed before 7/1/96)
513.48 (offenses committed on and after 7/1/96)	OJI-CR 513.48 (offenses committed on and after 7/1/96)
513.51 (offenses committed before 7/1/96)	OJI-CR 513.51 (offenses committed before 7/1/96)
513.51 (offenses committed on or after 7/1/96)	OJI-CR 513.51 (offenses committed on or after 7/1/96)
513.81 (offenses committed before 7/1/96)	OJI-CR 513.81 (offenses committed before 7/1/96)
513.401	OJI-CR 513.401
515.02	OJI-CR 515.02
515.03	OJI-CR 515.03
515.04	OJI-CR 515.04
515.05	OJI-CR 515.05
515.05(A) (offenses committed before 7/1/96)	OJI-CR 515.05(A) (offenses committed before 7/1/96)
515.05(B) (offenses committed on and after 7/1/96)	OJI-CR 515.05(B) (offenses committed on and after 7/1/96)
515.06 (offenses committed before 7/1/96)	OJI-CR 515.06 (offenses committed before 7/1/96)
515.07	OJI-CR 515.07
515.09	OJI-CR 515.09
515.10(A)	OJI-CR 515.10(A)
515.10(C)	OJI-CR 515.10(C)
515.11	OJI-CR 515.11
515.12 (offenses committed before 7/1/96)	OJI-CR 515.12 (offenses committed before 7/1/96)
517.01	OJI-CR 517.01
517.02(A)	OJI-CR 517.02(A)
517.02(B)	OJI-CR 517.02(B)
517.03	OJI-CR 517.03
517.11(A)	OJI-CR 517.11(A)
517.11(B)	OJI-CR 517.11(B)
517.12	OJI-CR 517.12
517.13	OJI-CR 517.13
517.21(A)	OJI-CR 517.21(A)
517.21(B)	OJI-CR 517.21(B)
517.31	OJI-CR 517.31
517.32	OJI-CR 517.32
517.40	OJI-CR 517.40



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517.41	OJI-CR 517.41
517.47	OJI-CR 517.47
519.01	OJI-CR 519.01
519.12(A)	OJI-CR 519.12(A)
519.12(B)	OJI-CR 519.12(B)
519.13(A)	OJI-CR 519.13(A)
519.13(B)	OJI-CR 519.13(B)
519.14	OJI-CR 519.14
519.21(A)	OJI-CR 519.21(A)
519.21(B)	OJI-CR 519.21(B)
519.22	OJI-CR 519.22
519.23(A)	OJI-CR 519.23(A)
519.23(B)	OJI-CR 519.23(B)
519.24	OJI-CR 519.24
519.24(A)(3) (offenses committed on and after 1/1/02)	OJI-CR 519.24(A)(3) (offenses committed on and after 1/1/02)
519.25	OJI-CR 519.25
519.27	OJI-CR 519.27
519.231	OJI-CR 519.231
521.02	OJI-CR 521.02
521.03 (offenses committed before 9/3/96)	OJI-CR 521.03 (offenses committed before 9/3/96)
521.03 (offenses committed on and after 9/3/96 and before 11/6/96)	OJI-CR 521.03 (offenses committed on and after 9/3/96 and before 11/6/96)
521.03 (offenses committed on and after 11/6/96)	OJI-CR 521.03 (offenses committed on and after 11/6/96)
521.04 (offenses committed before 9/3/96)	OJI-CR 521.04 (offenses committed before 9/3/96)
521.04 (offenses committed on and after 9/3/96)	OJI-CR 521.04 (offenses committed on and after 9/3/96)
521.05	OJI-CR 521.05
521.11	OJI-CR 521.11
521.12	OJI-CR 521.12
521.13 (offenses committed before 7/1/96)	OJI-CR 521.13 (offenses committed before 7/1/96)
521.13 (offenses committed on and after 7/1/96 and before 10/1/97)	OJI-CR 521.13 (offenses committed on and after 7/1/96 and before 10/1/97)
521.13 (offenses committed on and after 10/1/97)	OJI-CR 521.13 (offenses committed on and after 10/1/97)
521.14	OJI-CR 521.14
521.21	OJI-CR 521.21
521.22(A)	OJI-CR 521.22(A)
521.22(B)	OJI-CR 521.22(B)
521.22(C)	OJI-CR 521.22(C)



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521.22(D) (offenses committed before 3/18/97)	OJI-CR 521.22(D) (offenses committed before 3/18/97)
521.22(D) (offenses committed on and after 3/18/97)	OJI-CR 521.22(D) (offenses committed on and after 3/18/97)
521.22(E)	OJI-CR 521.22(E)
521.24	OJI-CR 521.24
521.31	OJI-CR 521.31
521.32 (offenses committed before 7/1/96)	OJI-CR 521.32 (offenses committed before 7/1/96)
521.32 (offenses committed on and after 7/1/96 and before 12/31/97)	OJI-CR 521.32 (offenses committed on and after 7/1/96 and before 12/31/97)
521.32 (offenses committed on and after 12/31/97)	OJI-CR 521.32 (offenses committed on and after 12/31/97)
521.321	OJI-CR 521.321
521.33 (offenses committed before 7/1/96)	OJI-CR 521.33 (offenses committed before 7/1/96)
521.33 (offenses committed on and after 7/1/96 but before 9/16/97)	OJI-CR 521.33 (offenses committed on and after 7/1/96 but before 9/16/97)
521.33 (offenses committed on and after 9/16/97)	OJI-CR 521.33 (offenses committed on and after 9/16/97)
521.34(A)(1)	OJI-CR 521.34(A)(1)
521.34(A)(2) (offense committed by sexually violent predator on and after 1/1/97)	OJI-CR 521.34(A)(2) (offense committed by sexually violent predator on and after 1/1/97)
521.35(A)	OJI-CR 521.35(A)
521.35(B)	OJI-CR 521.35(B)
521.36	OJI-CR 521.36
521.38	OJI-CR 521.38 (offenses committed on and after 6/11/97 but before 4/4/07) OJI-CR 521.38 (offenses committed on and after 4/4/07)
521.41	OJI-CR 521.41
521.42	OJI-CR 521.42
521.43(A)	OJI-CR 521.43(A)
521.43(B)	OJI-CR 521.43(B)
521.43(C)	OJI-CR 521.43(C)
521.44(A)	OJI-CR 521.44(A)
521.44(B)	OJI-CR 521.44(B)
521.44(C)	OJI-CR 521.44(C)
521.44(D)	OJI-CR 521.44(D)
521.44(E)	OJI-CR 521.44(E)
521.45	OJI-CR 521.45
521.51(B)	OJI-CR 521.51(B)
521.51(C)	OJI-CR 521.51(C)
521.51(D)	OJI-CR 521.51(D)
521.51(E)	OJI-CR 521.51(E)

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521.52	OJI-CR 521.52
521.331	OJI-CR 521.331
523.01 (offenses committed before 7/1/96)	OJI-CR 523.01 (offenses committed before 7/1/96)
523.01 (offenses committed on and after 7/1/96)	OJI-CR 523.01 (offenses committed on and after 7/1/96)
523.02 (offenses committed before 7/1/96)	OJI-CR 523.02 (offenses committed before 7/1/96)
523.02 (offenses committed on and after 7/1/96)	OJI-CR 523.02 (offenses committed on and after 7/1/96)
523.03 (offenses committed before 7/1/96)	OJI-CR 523.03 (offenses committed before 7/1/96)
523.03 (offenses committed on and after 7/1/96)	OJI-CR 523.03 (offenses committed on and after 7/1/96)
523.12	OJI-CR 523.12
523.13 (offenses committed before 7/1/96)	OJI-CR 523.13 (offenses committed before 7/1/96)
523.13(A) (offenses committed on and after 7/1/96)	OJI-CR 523.13(A) (offenses committed on and after 7/1/96)
523.13(B) (offenses committed on and after 7/1/96)	OJI-CR 523.13(B) (offenses committed on and after 7/1/96)
523.15	OJI-CR 523.15
523.16	OJI-CR 523.16
523.17 (offenses committed before 7/1/96)	OJI-CR 523.17 (offenses committed before 7/1/96)
523.17 (offenses committed on and after 7/1/96)	OJI-CR 523.17 (offenses committed on and after 7/1/96)
523.19	OJI-CR 523.19
523.20 (offenses committed before 7/1/96)	OJI-CR 523.20 (offenses committed before 7/1/96)
523.20 (offenses committed on and after 7/1/96)	OJI-CR 523.20 (offenses committed on and after 7/1/96)
523.21 (offenses committed before 11/9/95)	OJI-CR 523.21 (offenses committed before 11/9/95)
523.21 (offenses committed on and after 11/9/95 but before 7/1/96)	OJI-CR 523.21 (offenses committed on and after 11/9/95 but before 7/1/96)
523.21 (offenses committed on and after 7/1/96)	OJI-CR 523.21 (offenses committed on and after 7/1/96)
523.211(B)	OJI-CR 523.211(B)
523.24 (offenses committed before 7/1/96)	OJI-CR 523.24 (offenses committed before 7/1/96)
523.24 (offenses committed on and after 7/1/96)	OJI-CR 523.24 (offenses committed on and after 7/1/96)
523.32(A)(1)	OJI-CR 523.32(A)(1)
523.32(A)(2)	OJI-CR 523.32(A)(2)
523.32(A)(3)	OJI-CR 523.32(A)(3)



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523.42 (offenses committed on and after 1/1/99)	OJI-CR 523.42 (offenses committed on and after 1/1/99)
523.44	OJI-CR 523.44
523.121 (offenses committed before 7/1/96)	OJI-CR 523.121 (offenses committed before 7/1/96)
523.121 (offenses committed on and after 7/1/96)	OJI-CR 523.121 (offenses committed on and after 7/1/96)
523.122 (offenses committed before 7/1/96)	OJI-CR 523.122 (offenses committed before 7/1/96)
523.122 (offenses committed on and after 7/1/96 but before 3/18/97)	OJI-CR 523.122 (offenses committed on and after 7/1/96 but before 3/18/97)
523.122 (offenses committed on and after 3/18/97 but before 8/6/99)	OJI-CR 523.122 (offenses committed on and after 3/18/97 but before 8/6/99)
523.122 (offenses committed on and after 8/6/99)	OJI-CR 523.122 (offenses committed on and after 8/6/99)
523.123(A)	OJI-CR 523.123(A)
523.123(B)	OJI-CR 523.123(B)
523.131	OJI-CR 523.131
523.161 (offenses committed before 7/1/96)	OJI-CR 523.161 (offenses committed before 7/1/96)
523.161 (offenses committed on and after 7/1/96 but before 8/6/99)	OJI-CR 523.161 (offenses committed on and after 7/1/96 but before 8/6/99)
523.161 (offenses committed on and after 8/6/99)	OJI-CR 523.161 (offenses committed on and after 8/6/99)
525.02 (offenses committed before 7/1/96)	OJI-CR 525.02 (offenses committed before 7/1/96)
525.02 (offenses committed on and after 7/1/96 but before 7/22/98)	OJI-CR 525.02 (offenses committed on and after 7/1/96 but before 7/22/98)
525.02 (offenses committed on and after 7/22/98)	OJI-CR 525.02 (offenses committed on and after 7/22/98)
525.03 (offenses committed before 7/1/96)	OJI-CR 525.03 (offenses committed before 7/1/96)
525.03 (offenses committed on and after 7/1/96 but before 2/13/2001)	OJI-CR 525.03 (offenses committed on and after 7/1/96 but before 2/13/2001)
525.03 (offenses committed on and after 2/13/2001)	OJI-CR 525.03 (offenses committed on and after 2/13/2001)
525.04 (offenses committed on and after 7/1/96 but before 8/7/2001)	OJI-CR 525.04 (offenses committed on and after 7/1/96 but before 8/7/2001)
525.04 (offenses committed on and after 7/1/96 but before 8/7/2001)	OJI-CR 525.04 (offenses committed on and after 7/1/96 but before 8/7/2001)
525.041	OJI-CR 525.041
525.05 (offenses committed before 3/23/2000)	OJI-CR 525.05 (offenses committed before 3/23/2000)
525.05 (offenses committed on and after 3/23/2000)	OJI-CR 525.05 (offenses committed on and after 3/23/2000)
525.06	OJI-CR 525.06
525.07	OJI-CR 525.07



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525.09(A) (offenses committed before 7/22/98)	OJI-CR 525.09(A) (offenses committed before 7/22/98)
525.09(A) (offenses committed on and after 7/22/98)	OJI-CR 525.09(A) (offenses committed on and after 7/22/98)
525.09(B)	OJI-CR 525.09(B)
525.11 (offenses committed before 7/1/96)	OJI-CR 525.11(offenses committed before 7/1/96)
525.11 (offenses committed on and after 7/1/96 but before 6/20/97)	OJI-CR 525.11 (offenses committed on and after 7/1/96 but before 6/20/97)
525.11 (offenses committed on and after 6/20/97)	OJI-CR 525.11 (offenses committed on and after 6/20/97)
525.12 (offenses committed before 7/1/96)	OJI-CR 525.12 (offenses committed before 7/1/96)
525.12 (offenses committed on and after 7/1/96)	OJI-CR 525.12 (offenses committed on and after 7/1/96)
525.13 (offenses committed before 7/1/96)	OJI-CR 525.13 (offenses committed before 7/1/96)
525.13 (offenses committed on and after 7/1/96)	OJI-CR 525.13 (offenses committed on and after 7/1/96)
525.14(C) (offenses committed before 7/1/96)	OJI-CR 525.14(C) (offenses committed before 7/1/96)
525.14(C) (offenses committed on and after 7/1/96)	OJI-CR 525.14(C) (offenses committed on and after 7/1/96)
525.22(offenses committed before 7/1/96)	OJI-CR 525.22 (offenses committed before 7/1/96)
525.22(offenses committed on and after 7/1/96)	OJI-CR 525.22(offenses committed on and after 7/1/96)
525.23 (offenses committed before 7/1/96)	OJI-CR 525.23 (offenses committed before 7/1/96)
525.23(offenses committed on and after 7/1/96 but before 7/22/98)	OJI-CR 525.23(offenses committed on and after 7/1/96 but before 7/22/98)
525.23(offenses committed on and after 7/22/98)	OJI-CR 525.23(offenses committed on and after 7/22/98)
525.24	OJI-CR 525.24
525.31(offenses committed before 7/1/96)	OJI-CR 525.31(offenses committed before 7/1/96)
525.31(offenses committed on and after 7/1/96)	OJI-CR 525.31(offenses committed on and after 7/1/96)
525.32 (offenses committed before 7/1/96)	OJI-CR 525.32 (offenses committed before 7/1/96)
525.32(offenses committed on and after 7/1/96 but before 1/1/97)	OJI-CR 525.32(offenses committed on and after 7/1/96 but before 1/1/97)
525.32(offenses committed on and after 1/1/97)	OJI-CR 525.32(offenses committed on and after 1/1/97)
525.33	OJI-CR 525.33
525.36 (offenses committed before 7/1/96)	OJI-CR 525.36 (offenses committed before 7/1/96)

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525.36 (offenses committed on and after 7/1/96)	OJI-CR 525.36 (offenses committed on and after 7/1/96)
525.37(offenses committed before 7/1/96)	OJI-CR 525.37(offenses committed before 7/1/96)
525.37 (offenses committed on and after 7/1/96)	OJI-CR 525.37 (offenses committed on and after 7/1/96)
525.42	OJI-CR 525.42
527.01	OJI-CR 527.01
527.02(B)(1)	OJI-CR 527.02(B)(1)
527.02(B)(2)	OJI-CR 527.02(B)(2)
527.02(B)(3) (offenses committed on and after 3/15/01)	OJI-CR 527.02(B)(3) (offenses committed on and after 3/15/01)
527.02(C)	OJI-CR 527.02(C)
527.03	OJI-CR 527.03
527.11	OJI-CR 527.11
527.12	OJI-CR 527.12
527.13	OJI-CR 527.13
527.21	OJI-CR 527.21
527.24(B)	OJI-CR 527.24(B)
527.24(C)	OJI-CR 527.24(C)
527.27(A) (offenses committed on and after 10/09/01)	OJI-CR 527.27(A) (offenses committed on and after 10/09/01)
527.27(B) (offenses committed on and after 10/09/01)	OJI-CR 527.27(B) (offenses committed on and after 10/09/01)
533.92	OJI-CR 533.92
547.11(A)(1)(offenses committed on and after 1/1/04)	OJI-CR 547.11(A)(1)(offenses committed on and after 1/1/04)
547.11(A)(2)-(6) (offenses committed on and after 1/1/04)	OJI-CR 547.11(A)(2)-(6) (offenses committed on and after 1/1/04)
547.11(B)(offenses committed on and after 1/1/04)	OJI-CR 547.11(B)(offenses committed on and after 1/1/04)
549.01(offenses committed on and after 1/1/04)	OJI-CR 709.01(offenses committed on and after 1/1/04)
549.02	OJI-CR 749.02
549.021	OJI-CR 749.021
549.03	OJI-CR 749.03
549.62(A)	OJI-CR 749.62(A)
549.62(B)	OJI-CR 749.62(B)
549.62(C)	OJI-CR 749.62(C)
549.62(D)	OJI-CR 749.62(D)
550.02 (offenses committed before 7/1/97)	OJI-CR 550.02 (offenses committed before 7/1/97)
550.04 (offenses committed on and after 7/1/97 but before 7/13/030)	OJI-CR 550.04 (offenses committed on and after 7/1/97 but before 7/13/030)
550.04 (offenses committed on and after 7/31/03)	OJI-CR 550.04 (offenses committed on and after 7/31/03)



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550.041 (offenses committed on and after 7/31/04)	OJI-CR 550.041 (offenses committed on and after 7/31/04)
550.05 (offenses committed before 7/1/97)	OJI-CR 550.05 (offenses committed before 7/1/97)
550.05 (offenses committed on and after 7/1/97 but before 7/31/03)	OJI-CR 550.05 (offenses committed on and after 7/1/97 but before 7/31/03)
550.05 (offenses committed on and after 7/31/03 but before 4/29/05)	OJI-CR 550.05 (offenses committed on and after 7/31/03 but before 4/29/05)
550.05 (offenses committed on and after 4/2/9/05)	OJI-CR 550.05 (offenses committed on and after 4/2/9/05)
550.06 (offenses committed on and after 7/1/97 but before 7/31/03)	OJI-CR 550.06 (offenses committed on and after 7/1/97 but before 7/31/03)
550.06 (offenses committed on and after 7/31/03)	OJI-CR 550.06 (offenses committed on and after 7/31/03)
551.01	OJI-CR 551.01
551.03	OJI-CR 551.03
551.05	OJI-CR 551.05
551.07	OJI-CR 551.07
551.09	OJI-CR 551.09
551.11	OJI-CR 551.11
555.03	OJI-CR 559.03
710.11(A)(offenses committed before 1/1/04)	OJI-CR 710.11(A)(offenses committed before 1/1/04)
710.11(A) (offenses committed on and after 1/1/04)	OJI-CR 710.11(A) (offenses committed on and after 1/1/04)
710.11(B)(offenses committed before 1/1/04)	OJI-CR 710.11(B)(offenses committed before 1/1/04)
710.11(B) (offenses committed on and after 1/1/04)	OJI-CR 710.11(B) (offenses committed on and after 1/1/04)
710.12(A)(1)(a)(offenses committed before 1/1/04)	OJI-CR 710.12(A)(1)(a)(offenses committed before 1/1/04)
710.12(A)(1)(a) (offenses committed on and after 6/1/04)	OJI-CR 710.12(A)(1)(a) (offenses committed on and after 6/1/04)
710.12(A)(1)(b) (offenses committed before 1/1/04)	OJI-CR 710.12(A)(1)(b) (offenses committed before 1/1/04)
710.12(A)(1)(b) (offenses committed on and after 1/1/04)	OJI-CR 710.12(A)(1)(b) (offenses committed on and after 1/1/04)
710.12(A)(2) (offenses committed before 1/1/04)	OJI-CR 710.12(A)(2) (offenses committed before 1/1/04)
710.12(A)(2)(offenses committed on and after 1/1/04)	OJI-CR 710.12(A)(2)(offenses committed on and after 1/1/04)
710.16(offenses committed before 1/1/04)	OJI-CR 710.16(offenses committed before 1/1/04)
710.16 (offenses committed before 1/1/04)	OJI-CR 710.16 (offenses committed before 1/1/04)
710.21 (offenses committed before 1/1/04)	OJI-CR 710.21 (offenses committed before 1/1/04)



Previous Instruction Number	New Edition Instruction Number
710.21(offenses committed on and after 1/1/04)	OJI-CR 710.21(offenses committed on and after 1/1/04)
711.19 (offenses committed before 1/1/04)	OJI-CR 711.19 (offenses committed before 1/1/04)
711.19 (offenses committed on and after 1/1/04 but before 6/1/04)	OJI-CR 711.19 (offenses committed on and after 1/1/04 but before 6/1/04)
711.19(offenses committed on and after 6/1/04)	OJI-CR 711.19(offenses committed on and after 6/1/04)
711.19(A) (offenses committed before 6/30/03)	OJI-CR 711.19(A) (offenses committed before 6/30/03)
711.19(A)(offenses committed on and after 6/30/03 but before 1/1/04)	OJI-CR 711.19(A)(offenses committed on and after 6/30/03 but before 1/1/04)
711.19(A)(offenses committed on and after 1/1/04 but before 6/1/04)	OJI-CR 711.19(A)(offenses committed on and after 1/1/04 but before 6/1/04)
711.19(A)(offenses committed on and after 6/1/04)	OJI-CR 711.19(A)(offenses committed on and after 6/1/04)
711.19(A)(1)(b)-(j) (offenses committed on and after 8/17/06)	711.19(A)(1)(b)-(j) (offenses committed on and after 8/17/06)
711.19(A)(2) (offenses committed on and after 9/23/04)	OJI-CR 711.19(A)(2) (offenses committed on and after 9/23/04)
711.19(B) (offenses committed before 6/30/03)	OJI-CR 711.19(B) (offenses committed before 6/30/03)
711.19(B) (offenses committed on and after 6/30/03 but before 1/1/04)	OJI-CR 711.19(B) (offenses committed on and after 6/30/03 but before 1/1/04)
711.19(B) (offenses committed on and after 1/1/04 but before 6/1/04)	OJI-CR 711.19(B) (offenses committed on and after 1/1/04 but before 6/1/04)
711.19(B)(offenses committed on and after 6/1/04)	OJI-CR 711.19(B)(offenses committed on and after 6/1/04)
711.194	OJI-CR 711.194
711.203 (offenses committed before 1/1/04)	OJI-CR 711.203 (offenses committed before 1/1/04)
711.203 (offenses committed on and after 1/1/04)	OJI-CR 711.203 (offenses committed on and after 1/1/04)



## Chapter CV 429

# ASSAULT, BATTERY, INFLICTION OF SERIOUS EMOTIONAL DISTRESS

- CV 429.01 Civil assault [Rev. 4/23/22]
- CV 429.03 Civil battery [Rev. 4/23/22]
- CV 429.05 Intentional infliction of serious emotional distress [Rev. 12-11-05]
- CV 429.07 Negligent infliction of serious emotional distress
- CV 429.09 Intentional tort claims, allocation of damages, multiple defendants, interrogatories required (claims arising on and after 4/9/03) [Rev. 2/27/21]
- CV 429.11 Intentional tort with other tortious conduct claims, allocation of damages, multiple defendants, interrogatories required (claims arising on and after 4/9/03) [Rev. 2/27/21]
- CV 429.01 Civil assault [Rev. 4/23/22]

### COMMENT

Civil assault is to be distinguished from criminal assault under R.C. 2903.13 and negligent assault under R.C. 2903.14. The essence of civil assault is the plaintiff's apprehension of harm, regardless of whether the actor actually has the ability to inflict the physical contact or threatened bodily harm. Without apprehension of harm there is no civil assault, and apprehension is a subjective matter. *Ryan v. Conover*, 59 Ohio App. 361 (1st Dist.1937); Restatement, Second, Torts, § 27.

1. GENERAL. The plaintiff claims that he/she was assaulted by the defendant.
2. PROOF OF CLAIM. Before you can find for the plaintiff, you must find by the greater weight of the evidence that the defendant intentionally (offered) (threatened) (attempted), without authority or consent, to (harm) (offensively contact) the plaintiff, that the (offer) (threat) (attempt) reasonably placed the plaintiff in fear of such (harm) (offensive contact), and that the defendant's conduct proximately caused (injury) (damage) to the plaintiff.

### COMMENT

Drawn from *Turek v. Phelps*, 11th Dist. Ashtabula No. 2016-A-0012, 2016-Ohio-7552; *Zieber v. Heffelfinger*, 5th Dist. Richland No. 08CA0042, 2009-Ohio-1227.



3. CONTACT (OPTIONAL). The plaintiff does not have to prove that there was contact.
4. WORDS ALONE (ADDITIONAL). Words alone do not constitute assault, but must be coupled with some definite act by the defendant with apparent ability to carry out the offensive act.

**COMMENT**

Drawn from *Herriott v. Trade Wind Express, Inc.*, 5th Dist. Richland No. 13CA32, 2013-Ohio-5692; *Tekavec v. Sears*, 8th Dist. Cuyahoga No. 65506 (Sept. 29, 1994).

5. INTENT. A person acts intentionally when he/she has the (purpose) (conscious objective) to produce a specific result. A person intends an act when it is done purposely, not accidentally. The intent with which a person does an act is known only to himself/herself, unless he/she expresses it to others or indicates it by his/her conduct. The defendant acted intentionally if he/she had the desire to cause the consequences of his/her act or believed that the consequences were substantially certain to result from it. In determining the intent with which a person did a particular act, you have to take into consideration his/her conduct before, during, and after the act, any statements made by him/her before, during, and after the act, and the manner in which the act itself was done.

**COMMENT**

Drawn from *Turek v. Phelps*, 11th Dist. Ashtabula No. 2016-A-0012, 2016-Ohio-7552; *Antonosanti v. Lowry*, 5th Dist. Stark No. CA-5509 (June 24, 1981).

6. AFFIRMATIVE DEFENSES. OJI-CV 303.03 § 4; OJI-CV 303.09.

**COMMENT**

The possible defenses to civil assault and civil battery are similar. Defenses may include self-defense, defense of another, defense of residence. See OJI-CV 303.09. Provocation may be shown to mitigate punitive damages.

7. CONCLUSION. OJI-CV Chapter 313.
8. PROXIMATE CAUSE. OJI-CV 405.01 §§ 2, 3.
9. DAMAGES. OJI-CV Chapter 315.
10. PUNITIVE DAMAGES. OJI-CV 315.37.
11. INTERROGATORIES. OJI-CV 429.09, OJI-CV 429.11.

**COMMENT**

Interrogatories are required in cases involving multiple defendants or claims of non-party liability.

**CV 429.03 Civil battery [Rev. 4/23/22]**

1. **GENERAL.** The plaintiff claims that he/she was the victim of battery by the defendant.
2. **PROOF OF CLAIM.** Before you can find for the plaintiff, you must find by the greater weight of the evidence that the defendant intentionally made a/an (harmful) (offensive) contact with the plaintiff, without the authority or consent to do so, and that the defendant's conduct proximately caused (injury) (damage) to the plaintiff.

**COMMENT**

Drawn from *Love v. Port Clinton*, 37 Ohio St.3d 98 (1988); *Huskins v. Huskins*, 7th Dist. Columbiana No. 10 CO 22, 2011-Ohio-1008.

3. **INTENT.** A person acts intentionally when he/she has the (purpose) (conscious objective) to produce a specific result. A person intends an act when it is done purposely, not accidentally. The intent with which a person does an act is known only to himself/herself, unless he/she expresses it to others or indicates it by his/her conduct. The defendant acted intentionally if he/she had the desire to cause the consequences of his/her act or believed that the consequences were substantially certain to result from it. In determining the intent with which a person did a particular act, you have to take into consideration his/her conduct before, during, and after the act, any statements made by him/her before, during, and after the act, and the manner in which the act itself was done.

**COMMENT**

Drawn from *Turek v. Phelps*, 11th Dist. Ashtabula No. 2016-A-0012, 2016-Ohio-7552; *Antonosanti v. Lowry*, 5th Dist. Stark No. CA-5509 (June 24, 1981).

4. **OFFENSIVE CONTACT.** "Offensive contact" means contact that is offensive to a reasonable sense of personal dignity.

**COMMENT**

Drawn from *Love v. Port Clinton*, 37 Ohio St.3d 98 (1988).

5. **TECHNICAL BATTERY IN A MEDICAL SETTING (ADDITIONAL).** If a physician treats a patient without authorization or consent, the physician has committed a technical battery, even if the procedure is beneficial or harmless. Unconsented touching can arise either because no consent was given or because the consent that was given was limited and the procedure(s) performed went beyond the consent given. A patient's consent must be informed consent, which means it must be given with sufficient knowledge and understanding of the nature of the touching.

**COMMENT**

Drawn from *Lacey v. Laird*, 166 Ohio St. 12 (1956), paragraph one of the syllabus; *Miller v. MetroHealth Med. Ctr.*, 8th Dist. Cuyahoga No. 106104, 2018-Ohio-1202.

In addition to this instruction, the trial judge should instruct on lack of informed consent. See OJI-CV 417.07, OJI-CV 417.09.

6. **AFFIRMATIVE DEFENSES.** OJI-CV 303.03 § 4; OJI-CV 303.09.

**COMMENT**

The possible defenses to civil assault and civil battery are similar. Defenses may include self-defense, defense of another, defense of residence. See OJI-CV 303.09. Provocation may be shown to mitigate punitive damages.

7. **CONCLUSION.** OJI-CV Chapter 313.

8. **PROXIMATE CAUSE.** OJI-CV 405.01 §§ 2, 3.

9. **DAMAGES.** OJI-CV Chapter 315.

10. **PUNITIVE DAMAGES.** OJI-CV 315.37.

11. **INTERROGATORIES.** OJI-CV 429.09, OJI-CV 429.11.

**COMMENT**

These interrogatories are required in cases involving multiple defendants or claims of non-party liability.

**CV 429.05 Intentional infliction of serious emotional distress [Rev. 12-11-05]**

**COMMENT**

For negligent infliction of serious emotional distress see OJI-CV 429.07.



1. (A) **DEFINITION.** Whenever an individual intentionally or recklessly acts in an extreme and outrageous manner so as to cause serious emotional distress to another, he may be held liable for any mental or physical injury caused.

**COMMENT**

*Yeager v. Local Union 20* (1983), 6 Ohio St.3d 369; *Reamsnyder v. Jaskolski* (1984), 10 Ohio St.3d 150.

(B) **ADDITIONAL.** Liability exists only where the (conduct) (acts) (is) (are) so outrageous in character and so extreme in degree, that (it) (they) (goes) (go) beyond all possible bounds of decency and may be regarded as atrocious and utterly intolerable in a civilized community.

(C) **MERE INSULTS.** Mere (insults) (indignities) (threats) (annoyances) (petty oppressions) are not enough. All people (plaintiffs) are (expected) (required) to be hardened to a certain amount of rough language or acts which are inconsiderate or unkind. The law does not intervene in every case where feelings are hurt and there is still freedom to express an unflattering opinion.

2. **ELEMENTS.** In order to recover the plaintiff must prove by the greater weight of the evidence three elements:

(1) That the defendant intentionally or recklessly acted in an extreme and outrageous manner.

(2) That defendant's actions proximately caused plaintiff's psychic (and) physical injuries.

(3) That plaintiff's mental anguish was serious and of a nature that no reasonable man could be expected to endure.

3. **INTEND (INTENT).** A person acts intentionally when he has the (purpose) (conscious objective) to produce a specific result. A person intends an act when it is done purposely, not accidentally. The intent with which a person does an act is known only to himself, unless he expresses it to others or indicates it by his conduct.

4. **RECKLESSLY.** A person acts recklessly when with heedless indifference to the consequences he perversely disregards a known risk that his conduct is likely to cause serious emotional distress.

5. **EXTREME AND OUTRAGEOUS.** An act is extreme and outrageous when it passes all reasonable bounds of decency and is excessive, wanton, or gross.

6. **SERIOUS.**

(A) The emotional distress or mental anguish must be serious. A reasonable person, of normal mental condition, would be unable to (contend with) (face) satisfactorily a serious (mental anguish) (emotional distress).

(B) **ADDITIONAL.** The law cannot provide damages or protect against all mental

anguish. People are required to (endure) (suffer) some emotional discomfort. To recover the plaintiff must prove by the greater weight of the evidence that the distress is serious.

7. DAMAGES. OJI-CV 315.01 et seq.

**COMMENT**

Be sure to include words which cover mental and emotional as well as physical health.

8. INTERROGATORIES. OJI-CV 429.09, OJI-CV 429.11.

**COMMENT**

These interrogatories are required in cases involving multiple defendants or claims of non-party liability.

9. PUNITIVE DAMAGES. OJI-CV 315.37.

10. CONCLUSION. OJI-CV Chapter 313.

**COMMENT**

This is an intentional tort. Remove words "of negligence" from conclusory paragraphs.

**CV 429.07 Negligent infliction of serious emotional distress**

**COMMENT**

Whether the emotional distress was serious enough to allow recovery is first for the court to decide as a matter of law. *Paugh v. Hanks* (1983), 6 Ohio St.3d 72, 6 Ohio B. 114, 451 N.E.2d 759.

"The *Paugh* standard creates a two-tier determination that is not otherwise applicable in the determination of mental damages to a person who is actually involved in the accident. The court first determines as a matter of law whether there was proof of emotional distress that was more than trifling, mere upset, or hurt feelings. Then the jury is instructed to find whether the emotional distress actually suffered reached the level of serious or debilitating emotional distress." *Binns v. Fredendall* (1987), 32 Ohio St.3d 244, 245, n. 1, 513 N.E.2d 278, 280, n. 1.

Whether the harm was foreseeable is also first to be decided by the court on a case by case basis, analyzing all the circumstances, excluding the remote and

unexpected. *Burris v. Grange Mutual Cos.* (1989), 46 Ohio St.3d 84, 92, 545 N.E.2d 83.

The claim for negligent infliction of emotional distress should not be confused with claims for emotional and psychic injuries sustained contemporaneously with a physical injury as such emotional distress need not be severe or debilitating. *Binns v. Fredendall*, *supra*.

1. GENERAL. To recover for negligent infliction of serious emotional distress, plaintiff must prove by the greater weight of the evidence that:

- (A) The defendant was negligent;
- (B) The plaintiff suffered serious emotional distress;
- (C) The serious emotional distress was the direct result of the negligence of the defendant;
- (D) The serious emotional distress of the plaintiff was reasonably foreseeable by the defendant at the time of the alleged negligence.

#### COMMENT

*Schultz v. Barberton Glass Company* (1983), 4 Ohio St.3d 131, 447 N.E.2d 109.

2. NEGLIGENCE. OJI-CV 401.01.

3. SERIOUS EMOTIONAL DISTRESS. Serious emotional distress describes injury which is both severe and debilitating. It does not extend to mere insults, indignities, threats, annoyances, petty oppression or mere trivialities. Thus, serious emotional distress may be found where a reasonable person, normally constituted, would be unable to cope adequately with the mental distress caused by the circumstances of the case. It is mental anguish of a nature that no reasonable person could be expected to endure. You may consider any evidence of a resulting physical (impairment) (condition) in judging the degree of emotional distress suffered.

#### COMMENT

*Reamsnyder v. Jaskolski* (1984), 10 Ohio St.3d 150, 462 N.E.2d 392; *Yeager v. Local Union 20* (1983), 6 Ohio St.3d 369, 453 N.E.2d 666; *Paugh v. Hanks*, *supra*; *Pyle v. Pyle* (1983), 11 Ohio App.3d 31, 463 N.E.2d 98 (intentional act).

4. REASONABLY FORESEEABLE. In determining whether serious emotional distress was reasonably foreseeable by defendant you should consider all of the circumstances of the parties existing at the time of the alleged negligence of the defendant.



**COMMENT**

No one standard charge will be applicable to all cases. For factors to be considered see *Paugh v. Hanks*, *supra*, syllabus 3b. For examples see *Pyle v. Pyle*, *supra*; *Carney v. Knollwood Cemetery Assn.* (1986), 33 Ohio App.3d 31, 514 N.E.2d 430 (mishandling of dead body); *Molien v. Kaiser Foundation Hospitals* (1980), 167 Cal. Rptr. 831, 616 P.2d 813 (misdiagnosis of syphilis); *Bass v. Nooney* (1983 Missouri), 646 S.W.2d 765 (one trapped in an elevator); *Prosser and Keeton*, *The Law of Torts* (5th ed. 1984) 361, Sec. 54; and OJI-CV 401.07.

5. BURDEN OF PROOF. OJI-CV 303.03.
6. PROXIMATE CAUSE. OJI-CV 405.01.
7. DAMAGES. OJI-CV Chapter 315.
8. CONCLUSIONS. OJI-CV Chapter 313.

**CV 429.09 Intentional tort claims, allocation of damages, multiple defendants, interrogatories required (claims arising on and after 4/9/03) [Rev. 2/27/21]**

**COMMENT**

R.C. 2307.011(D) defines an intentional tort claim as one alleging “that a tortfeasor intentionally caused or intentionally contributed to the injury or loss to person or property or the wrongful death or that a tortfeasor knew or believed that the injury or loss to person or property or the wrongful death was substantially certain to result from the tortfeasor’s conduct.” The Committee believes that the legislature did not intend to modify the elements of any common law intentional tort.

R.C. 2307.22 and 2307.23 allocate damages based on the intentional conduct of multiple actors, as defined in R.C. 2307.011(D).

S.B. 120 provides that tortious conduct of other responsible parties or persons can reduce the damages available to a plaintiff who otherwise meets the burden of proof and persuasion. R.C. 2307.22 and 2307.23. The judge must identify every potentially liable person.

The interrogatories are designed for cases in which there is only one plaintiff, and all defendants are alleged to have acted intentionally. If there is more than one plaintiff, a separate set of interrogatories should be used for each plaintiff. If more than two responsible persons are involved, the interrogatories will have to be expanded.

## 1. INTRODUCTION TO INTERROGATORIES.

**COMMENT**

OJI-CV 321.01.

Ohio follows the "same juror" rule. *O'Connell v. Chesapeake & Ohio RR. Co.*, 58 Ohio St.3d 226 (1991). The Committee believes that *O'Connell* establishes that only those jurors who find negligence may vote on proximate cause. *But see Dillon v. OhioHealth Corp.*, 10th Dist. Franklin Nos. 13AP-467 and 14AP-259, 2015-Ohio-1389, appeal not accepted, 144 Ohio St.3d 1407, 2015-Ohio-4947 (holding that "a juror who failed to find negligence was still able to determine proximate cause"); *see also Estate of Lawson v. Mercy Hosp. Fairfield*, 12th Dist. Butler No. CA2010-12-340, 2011-Ohio-4471 (holding that "standard of care and proximate cause of injury are not interdependent pursuant to the analysis provided in *O'Connell*, and therefore we do not invoke the 'same juror' rule herein").

## 2. INTERROGATORIES.

(A) DID (insert name of defendant 1) (identify intentional tort with respect to plaintiff)?

CIRCLE YOUR ANSWER IN INK

YES or NO

_____	_____
_____	_____
_____	_____
_____	_____

(1) If the answer of (six) (three-fourths) or more jurors to (A) is "yes," move to Interrogatory (B). In answering the following Interrogatory (B) about whether the defendant's conduct was a direct and proximate cause of the plaintiff's (injury)(damages), only those jurors who answered "yes" to Interrogatory (A) are qualified to participate in answering Interrogatory (B).

**COMMENT**

Ohio follows the "same juror" rule. *O'Connell v. Chesapeake and Ohio Railroad* (1991), 58 Ohio St.3d 226.

(2) If the answer of (six) (three-fourths) or more jurors to (A) is "no,"

(a) sign the general verdict for (insert name of defendant 1), and

(b) move to interrogatory (C).

(3) If six jurors cannot agree on an answer to Interrogatory (A), report this to the court.

(B) WAS THE (*identify intentional tort*) COMMITTED BY (*insert name of defendant 1*) A DIRECT AND PROXIMATE CAUSE OF ANY (INJURY) (DAMAGES) TO THE PLAINTIFF?

CIRCLE YOUR ANSWER IN INK

YES or NO

_____	_____
_____	_____
_____	_____

(1) If the answer of (six) (three-fourths) or more jurors to (B) is “yes,” move to Interrogatory (C) and all jurors may participate.

(2) If the answer of (six) (three-fourths) or more jurors to (B) is “no,”

(a) sign the general verdict for (*insert name of defendant 1*),

(b) move to Interrogatory (C) and all jurors may participate.

(3) If (six) (three-fourths) jurors cannot agree on an answer to Interrogatory (B), report this to the court.

(C) DID (*insert name of defendant 2*) (*identify intentional tort with respect to plaintiff*).

CIRCLE YOUR ANSWER IN INK

YES or NO

_____	_____
_____	_____
_____	_____

(1) If the answer of (six) (three-fourths) or more jurors to (C) is “yes,” move to Interrogatory (D) and only those jurors who answered “yes” to (C) may participate.

(2) If the answer of (six) (three-fourths) or more jurors to (C) is “no,” sign the general verdict for (*insert name of defendant 2*).

(3) If (six) (three-fourths) jurors cannot agree on an answer to Interrogatory (C), report this to the court.

(D) WAS THE (*identify intentional tort*) COMMITTED BY (*insert name of Defendant 2*) A DIRECT AND PROXIMATE CAUSE OF ANY (INJURY)(DAMAGES) TO THE PLAINTIFF?

CIRCLE YOUR ANSWER IN INK

YES or NO

_____	_____
_____	_____
_____	_____



(1) If the answer of (six) (three-fourths) or more jurors to (D) is "yes," move to Interrogatory (E) and all jurors may participate.

(2) If the answer of (six) (three-fourths) or more jurors to (D) is "no," sign the general verdict for (*insert name of defendant* 2).

(3) If (six) (three-fourths) jurors cannot agree on an answer to Interrogatory (D), report this to the court.

(E) (WAS [*insert identity of non-party*] NEGLIGENT?) (DID [*insert identity of non-party*] [*describe other tortious conduct*]?)

CIRCLE YOUR ANSWER IN INK      YES or NO

_____	_____
_____	_____
_____	_____
_____	_____

(1) If the answer of (six) (three-fourths) or more jurors to (E) is "yes," move to Interrogatory (F). In answering the following Interrogatory (F) about whether the conduct of (*insert identity of non-party*) was a direct and proximate cause of the plaintiff's (injury) (damages), only those jurors who answered "yes" to Interrogatory (E) are qualified to participate in answering Interrogatory (F).

(2) If the answer of (six) (three-fourths) or more jurors to (E) is "no," move to Interrogatory (G).

(3) If (six) (three-fourths) jurors cannot agree on an answer to Interrogatory (E), report this to the court.

(F) WAS THE (NEGLIGENCE) (*describe other tortious conduct*) OF (*insert identity of non-party*) A DIRECT AND PROXIMATE CAUSE OF ANY (INJURY) (DAMAGES) TO THE PLAINTIFF?

CIRCLE YOUR ANSWER IN INK      YES or NO

_____	_____
_____	_____
_____	_____
_____	_____

(1) If the answer of (six) (three-fourths) or more jurors to (F) is "yes" or "no," move to Interrogatory (G).

(2) If (six) (three-fourths) jurors cannot agree on an answer to Interrogatory (F), report this to the court.

(G) In answering the following Interrogatory (G) about the percentages of (*describe tortious conduct*) that was a direct and proximate cause of the plaintiff's (injury) (damages), please observe the following:

(1) For each (non party) (person who was not sued) who proximately caused the

Plaintiff's (injury) (damages) state the percentage of *(describe all tortious conduct that caused the plaintiff's [injuries] [damages])* attributable to that person.

(2) For each defendant whose *(describe tortious conduct)* proximately caused the plaintiff's (injury) (damages) state the percentage of *(describe all tortious conduct that proximately caused the plaintiff's [injury] [damages])* attributable to that person.

**(3) ENTER PERCENTAGES.**

(a) PERCENTAGE OF *(describe all tortious conduct)* ATTRIBUTABLE TO:  
*(insert name of defendant 1, if applicable):* \_\_\_\_\_%

(b) PERCENTAGE OF *(describe all tortious conduct)* ATTRIBUTABLE TO  
*(insert name of defendant 2, if applicable):* \_\_\_\_\_%

(c) PERCENTAGE OF (NEGLIGENCE) *(describe other tortious conduct)*  
ATTRIBUTABLE TO THE FOLLOWING PERSON *(identity non-party):* \_\_\_\_\_%

**COMMENT**

The judge must identify every potentially liable person. This interrogatory must be modified to include every potentially liable party and non-party.

(d) The percentages attributable to defendant(s) and other person(s) must equal the total of:

100%

_____	_____
_____	_____
_____	_____
_____	_____

(4) If (six) (three-fourths) jurors cannot agree on an answer to interrogatory (G) report this to the court.

(5) When (six) (three-fourths) jurors have agreed on an answer to interrogatory (G):

(a) move to Interrogatory (H), and all the jurors shall participate in the deliberations, and

(b) sign the general verdict for the plaintiff.

**(H) STATE THE TOTAL AMOUNT OF COMPENSATORY DAMAGES TO THE PLAINTIFF.**

STATE YOUR ANSWER IN  
FIGURES IN INK

\$ \_\_\_\_\_

_____	_____
_____	_____
_____	_____
_____	_____

### COMMENT

The Committee believes that since the issues relating to damages are analytically different from those relating to liability, the determination of damages may be made by all jurors.

### (I) PLEASE STATE THE FOLLOWING:

(1) THE PORTION OF THE COMPENSATORY DAMAGES THAT REPRESENTS ECONOMIC LOSS TO THE PLAINTIFF:

\$ \_\_\_\_\_

(2) THE PORTION OF THE COMPENSATORY DAMAGES THAT REPRESENTS NON-ECONOMIC LOSS TO THE PLAINTIFF: \$ \_\_\_\_\_

(3) THE TOTAL AMOUNT OF THE COMPENSATORY DAMAGES SUSTAINED BY THE PLAINTIFF (TOTAL OF "ECONOMIC" AND "NON-ECONOMIC" LOSS): \$ \_\_\_\_\_

_____	_____
_____	_____
_____	_____
_____	_____

### COMMENT

S.B. 120 requires that the jury distinguish between economic and non-economic damages. The distinction between economic and non-economic damages is significant, as different percentages of each may be recoverable against particular defendants, depending upon the allocation of liability, R.C. 2307.22, 2307.23.

3. COMPENSATORY DAMAGES. "Compensatory damages" include both economic and non-economic loss.

### COMMENT

When plaintiff's claim for future damages exceeds \$200,000, see introductory



comment to OJI-CV 403.05.

4. ECONOMIC LOSS. R.C. 2307.011.
5. NON-ECONOMIC LOSS. R.C. 2307.011.
6. GENERAL VERDICT. OJI-CV 403.01 § 4 (claims arising before 1/5/88).

**CV 429.11 Intentional tort with other tortious conduct claims, allocation of damages, multiple defendants, interrogatories required (claims arising on and after 4/9/03) [Rev. 2/27/21]**

**COMMENT**

R.C. 2307.011(D) defines an intentional tort claim as one alleging “that a tortfeasor intentionally caused or intentionally contributed to the injury or loss to person or property or the wrongful death or that a tortfeasor knew or believed that the injury or loss to person or property or the wrongful death was substantially certain to result from the tortfeasor’s conduct.” The Committee believes that the legislature did not intend to modify the elements of any common law intentional tort.

R.C. 2307.22 and 2307.23 allocate damages based on the intentional conduct of multiple actors, as defined in R.C. 2307.011(D).

S.B. 120 provides that tortious conduct of other responsible parties or persons can reduce the damages available to a plaintiff who otherwise meets the burden of proof and persuasion. R.C. 2307.22 and 2307.23. The judge must identify every potentially liable person.

These interrogatories are designed for cases in which a single plaintiff has alleged an intentional tort against one or more defendants and a non-intentional tort against one or more defendants. If there is more than one plaintiff, a separate set of interrogatories should be used for each.

R.C. 2307.22 and .23 provide for allocation of responsibility/damages based on multiple actors’ roles in causing damages by intentional conduct as defined in R.C. 2307.011(D) and/or other tortious conduct.

For employer intentional torts, see OJI-CV 537.05.

**1. INTRODUCTION TO INTERROGATORIES.**

**COMMENT**

OJI-CV 321.01.

Ohio follows the “same juror” rule. *O’Connell v. Chesapeake & Ohio RR. Co.*, 58 Ohio St.3d 226 (1991). The Committee believes that *O’Connell* establishes that only those jurors who find negligence may vote on proximate cause. *But see Dillon v. OhioHealth Corp.*, 10th Dist. Franklin Nos. 13AP-467 and 14AP-259, 2015-

Ohio-1389, appeal not accepted. 144 Ohio St.3d 1407, 2015-Ohio-4947 (holding that “a juror who failed to find negligence was still able to determine proximate cause”); *see also Estate of Lawson v. Mercy Hosp. Fairfield*, 12th Dist. Butler No. CA2010-12-340, 2011-Ohio-4471 (holding that “standard of care and proximate cause of injury are not interdependent pursuant to the analysis provided in *O’Connell*, and therefore we do not invoke the ‘same juror’ rule herein”).

## 2. INTERROGATORIES.

(A) DID (*insert name of defendant I*) (*describe non-intentional tortious conduct claimed by plaintiff*)?

CIRCLE YOUR ANSWER IN INK

YES or NO

_____	_____
_____	_____
_____	_____
_____	_____

(1) If the answer of (six) (three-fourths) or more jurors to (A) is “yes,” move to Interrogatory (B). In answering the following Interrogatory (B) about whether the defendant’s conduct was a direct and proximate cause of the plaintiff’s (injury)(damages), only those jurors who answered “yes” to Interrogatory (A) are qualified to participate.

### COMMENT

Ohio follows the “same juror” rule. *O’Connell v. Chesapeake and Ohio Railroad* (1991), 58 Ohio St.3d 226.

(2) If the answer of (six) (three-fourths) or more jurors to (A) is “no.”

(a) sign the general verdict for (*insert name of defendant I*), and

(b) move to Interrogatory (C).

(3) If six jurors cannot agree on an answer to Interrogatory (A), report this to the court.

(B) WAS (*insert name of defendant I*) (*describe non-intentional tortious conduct claimed by plaintiff*) A DIRECT AND PROXIMATE CAUSE OF ANY (INJURY)(DAMAGES) TO THE PLAINTIFF?

CIRCLE YOUR ANSWER IN INK

YES or NO

_____	_____
_____	_____
_____	_____
_____	_____

(1) If (six) (three-fourths) of the jurors have answered “yes” to Interrogatory (B) move to Interrogatory (C).

(2) If (six) (three-fourths) of the jurors have answered “no” to Interrogatory (B)

(a) sign the general verdict for *(insert name of defendant 1)*, and

(b) move to Interrogatory (C).

(3) If *six jurors cannot agree on an answer to Interrogatory (B)*, report this to the court.

(C) DID *(insert name of defendant 2)* *(describe intentional tortious conduct claimed by plaintiff)*?

CIRCLE YOUR ANSWER IN INK

YES or NO

_____	_____
_____	_____
_____	_____
_____	_____

(1) If (six) (three-fourths) of the jurors have answered “yes” to Interrogatory (C), move to Interrogatory (D). In answering the following Interrogatory (D) about whether the defendant’s conduct was a direct and proximate cause of the plaintiff’s (injury)(damages), only those jurors who answered “yes” to Interrogatory (C) are qualified to participate.

(2) If (six) (three-fourths) of the jurors have answered “no” to Interrogatory (C), sign the verdict for *(insert name of defendant 2)* and move to Interrogatory (E) only if you have answered “yes” to both interrogatories (A) and (B). If you have signed the verdict forms for both *(insert names of defendants 1 and 2)* report this to the court.

(3) If six jurors cannot agree on an answer to Interrogatory (C), report this to the court.

(D) WAS *(insert name of defendant 2)* *(describe intentional tortious conduct claimed by plaintiff)* A DIRECT AND PROXIMATE CAUSE OF ANY (INJURY) (DAMAGES) TO THE PLAINTIFF?

CIRCLE YOUR ANSWER IN INK

YES or NO

_____	_____
_____	_____
_____	_____
_____	_____

(1) If (six) (three-fourths) of the jurors have answered “yes” to interrogatories (C) and (D), and you have signed the general verdict for *(insert name of defendant 1)*, move to Interrogatory (H).



(2) If (six) (three-fourths) of the jurors have answered "no" to Interrogatory (D), sign the verdict for (*insert name of defendant 2*) and move to Interrogatory (E) only if you have answered "yes" to both interrogatories (A) and (B). If you have signed the verdict forms for both (*insert names of defendants 1 and 2*) report this to the court.

(3) If six jurors cannot agree on an answer to Interrogatory (D), report this to the court.

(E) (WAS THE PLAINTIFF NEGLIGENT?) (DID THE PLAINTIFF IMPLIEDLY ASSUME THE RISK OF INJURY?) (DID THE PLAINTIFF [*DESCRIBE OTHER TORTIOUS CONDUCT*]?)

CIRCLE YOUR ANSWER IN INK

YES or NO

_____	_____
_____	_____
_____	_____

(1) If the answer of six or more jurors to (E) is "yes," move to Interrogatory (F). In answering the following Interrogatory (F), only those jurors who answered "yes" to Interrogatory (E) are qualified to participate.

(2) If six jurors cannot agree on an answer to Interrogatory (E), report this to the Court.

(3) If the answer of six or more jurors to (E) is "no," and only one defendant remains, sign the general verdict for the plaintiff and move to Interrogatory (H).

(4) If the answer of six or more jurors to (E) is "no," and more than one defendant remains, sign the general verdict for the plaintiff and move to Interrogatory (G).

(F) WAS THE PLAINTIFF'S (NEGLIGENCE) (ASSUMPTION OF THE RISK) (*DESCRIBE TORTIOUS CONDUCT*) A DIRECT AND PROXIMATE CAUSE OF ANY (INJURY) (DAMAGES) TO THE PLAINTIFF?

CIRCLE YOUR ANSWER IN INK

YES or NO

_____	_____
_____	_____
_____	_____

(1) If the answer of six or more jurors to (F) is "no," and the answer of six or more jurors to both (A) and (B) is "yes," and the answer to either (C) or (D) is "no," sign the general verdict for the plaintiff and move to Interrogatory (H).

(2) If the answer of six or more jurors to (F) is "no," and the answer of six or more jurors to either (A) or (B) is "no," and the answer to both (C) and (D) is "yes," sign the general verdict for the plaintiff and move to Interrogatory (H).

(G) (WAS [*insert identity of non-party*] NEGLIGENT?) (DID [*insert identity of non-party*] [*describe other tortious conduct*]?)

CIRCLE YOUR ANSWER IN INK      YES or NO

_____	_____
_____	_____
_____	_____
_____	_____

(1) If the answer of (six) (three-fourths) or more jurors to (G) is “yes,” move to Interrogatory (H). In answering the following Interrogatory (H) about whether the conduct of (*insert identity of non-party*) was a direct and proximate cause of the plaintiff’s (injury) (damages), only those jurors who answered “yes” to Interrogatory (G) are qualified to participate.

(2) If the answer of (six) (three-fourths) or more jurors to (G) is “no,” move to Interrogatory (I).

(3) If (six) (three-fourths) jurors cannot agree on an answer to Interrogatory (G), report this to the court.

(H) WAS THE (NEGLIGENCE) (*describe other tortious conduct*) OF (*insert identity of non-party*) A DIRECT AND PROXIMATE CAUSE OF ANY (INJURY) (DAMAGES) TO THE PLAINTIFF?

CIRCLE YOUR ANSWER IN INK      YES or NO

_____	_____
_____	_____
_____	_____
_____	_____

(1) If (six) (three-fourths) jurors cannot agree on an answer to Interrogatory (H), report this to the court.

(2) If the answer of (six) (three-fourths) or more jurors to (H) is “yes” or “no,” move to Interrogatory (I). In answering the following Interrogatory (I) about the percentages of conduct that was a direct and proximate cause of the plaintiff’s (injury) (damages), select one of the following alternatives:

(a) PLAINTIFF, (*insert name of defendant 1*), (*insert name of defendant 2*), AND (*insert identity of non-party*) ALL RESPONSIBLE FOR PLAINTIFF’S INJURY. If (six) (three-fourths) or more jurors answered “yes” to Interrogatories (A), (B), (C), (D), (E), (F), (G), and (H) move to Interrogatory (I)(1). Only those jurors who answered “yes” to all eight Interrogatories (A), (B), (C), (D), (E), (F), (G), and (H) are qualified to participate in answering Interrogatory (I)(1).

(b) PLAINTIFF, (*insert name of defendant 1*), AND (*insert name of defendant*



2) RESPONSIBLE FOR PLAINTIFF'S INJURY. If (six) (three-fourths) or more jurors answered "yes" to Interrogatories (A), (B), (C), (D), (E), and (F) move to Interrogatory (I)(2). Only those jurors who answered "yes" to Interrogatories (A), (B), (C), (D), (E), and (F) are qualified to participate in answering Interrogatory (I)(2).

(c) ONLY PLAINTIFF AND *(insert name of defendant 1)* RESPONSIBLE FOR PLAINTIFF'S INJURY. If (six) (three-fourths) or more jurors answered "yes" to Interrogatories (A), (B), (E), and (F) move to Interrogatory (I)(3). Only those jurors who answered "yes" to Interrogatories (A), (B), (E), and (F) are qualified to participate in answering Interrogatory (I)(3).

(d) ONLY *(insert name of defendant 1)*, *(insert name of defendant 2)*, AND *(insert identity of non-party)* RESPONSIBLE FOR PLAINTIFF'S INJURY. If (six) (three-fourths) or more jurors answered "yes" to Interrogatories (A), (B), (C), (D), (G), and (H) move to Interrogatory (I)(4). Only those jurors who answered "yes" to Interrogatories (A), (B), (C), (D), (G), and (H) are qualified to participate in answering Interrogatory (I)(4).

(e) ONLY *(insert name of defendant 1)* AND *(insert name of defendant 2)* RESPONSIBLE FOR PLAINTIFF'S INJURY. If (six) (three-fourths) or more jurors answered "yes" to Interrogatories (A), (B), (C), and (D) move to Interrogatory (I)(5). Only those jurors who answered "yes" to Interrogatories (A), (B), (C), and (D) are qualified to participate in answering Interrogatory (I)(5).

(f) ONLY *(insert name of defendant 1)* AND *(insert identity of non-party)* RESPONSIBLE FOR PLAINTIFF'S INJURY. If (six) (three-fourths) or more jurors answered "yes" to Interrogatories (A), (B), (G), and (H) move to Interrogatory (I)(6). Only those jurors who answered "yes" to Interrogatories (A), (B), (G), and (H) are qualified to participate in answering Interrogatory (I)(6).

(g) ONLY *(insert name of defendant 2)* AND *(insert identity of non-party)* RESPONSIBLE FOR PLAINTIFF'S INJURY. If (six) (three-fourths) or more jurors answered "yes" to Interrogatories (C), (D), (G), and (H) move to Interrogatory (I)(7). Only those jurors who answered "yes" to Interrogatories (C), (D), (G), and (H) are qualified to participate in answering Interrogatory (I)(7).

(h) If less than (six) (three-fourths) jurors are qualified to answer (I)(1), (I)(2), (I)(3), (I)(4), (I)(5), (I)(6), or (I)(7) report this to the court.

(I)(1) STATE THE PERCENTAGES OF (NEGLIGENCE) (IMPLIED ASSUMPTION OF RISK) *(describe other tortious conduct)* OF THE PLAINTIFF, NEGLIGENCE OF *(insert name of defendant 1)*, *(describe intentional tortious conduct)* OF *(insert name of defendant 2)* AND (NEGLIGENCE) *(describe other tortious conduct)* OF *(insert identity of non-party)* WAS A DIRECT AND PROXIMATE CAUSE OF THE PLAINTIFF'S (INJURY) (DAMAGES):



## (a) ENTER PERCENTAGES.

(i) PERCENTAGE OF (NEGLIGENCE) (IMPLIED ASSUMPTION OF THE RISK) (*describe other tortious conduct*) OF THE PLAINTIFF: \_\_\_\_\_%

(ii) PERCENTAGE OF NEGLIGENCE OF (*insert name of defendant 1*): \_\_\_\_\_%

(iii) PERCENTAGE OF (*describe intentional tortious conduct*) OF (*insert name of defendant 2*): \_\_\_\_\_%

(iv) PERCENTAGE OF (NEGLIGENCE) (*describe other tortious conduct*) OF (*insert identity of non-party*): \_\_\_\_\_%

**COMMENT**

The judge must identify every potentially liable person.

(v) The percentages attributable to plaintiff, defendants, and non-party must equal the total of:

100%

_____	_____
_____	_____
_____	_____
_____	_____

(b) If the percentage attributed to the plaintiff is 50% or less,

(i) move to Interrogatory (J), and all the jurors shall participate in the deliberations, and

(ii) sign the general verdict for the plaintiff.

(c) If the percentage attributable to the plaintiff is greater than 50%,

(i) move to Interrogatory (J), and all the jurors shall participate in the deliberations, and

(ii) sign the general verdicts for (*insert name of defendant 1*).

(d) If (six) (three-fourths) jurors can not agree on an answer to Interrogatory (I)(1) report this to the court.

(I)(2) STATE THE PERCENTAGES OF (NEGLIGENCE) (IMPLIED ASSUMPTION OF RISK) (*describe other tortious conduct*) OF THE PLAINTIFF, NEGLIGENCE OF (*insert name of defendant 1*), AND (*describe intentional tortious conduct*) OF (*insert name of defendant 2*) THAT WAS A DIRECT AND PROXIMATE CAUSE OF THE PLAINTIFF'S (INJURY) (DAMAGES):

## (a) ENTER PERCENTAGES.

(i) PERCENTAGE OF (NEGLIGENCE) (IMPLIED ASSUMPTION OF THE RISK) (*describe other tortious conduct*) OF THE PLAINTIFF: \_\_\_\_\_%

(ii) PERCENTAGE OF NEGLIGENCE OF (*insert name of defendant 1*): \_\_\_\_\_%

(iii) PERCENTAGE OF (*describe intentional tortious conduct*) OF (*insert name of defendant 2*): \_\_\_\_\_%

## COMMENT

The judge must identify every potentially liable person.

(iv) The percentages attributable to plaintiff and defendants must equal the total of:

100%

_____	_____
_____	_____
_____	_____
_____	_____

(b) If the percentage attributed to the plaintiff is 50% or less,

(i) move to Interrogatory (J), and all the jurors shall participate in the deliberations, and

(ii) sign the general verdict for the plaintiff.

(c) If the percentage attributable to the plaintiff is greater than 50%.

(i) move to Interrogatory (J), and all the jurors shall participate in the deliberations, and

(ii) sign the general verdicts for the (*insert name of defendant 1*).

(d) If (six) (three-fourths) jurors can not agree on an answer to Interrogatory (I)(2) report this to the court.

(I)(3) STATE THE PERCENTAGES OF NEGLIGENCE OF (*insert name of defendant 1*) AND (NEGLIGENCE) (IMPLIED ASSUMPTION OF RISK) (*describe other tortious conduct*) OF THE PLAINTIFF THAT WAS A DIRECT AND PROXIMATE CAUSE OF THE PLAINTIFF'S (INJURY) (DAMAGES).

## (a) ENTER PERCENTAGES.

(i) PERCENTAGE OF NEGLIGENCE OF (*insert name of defendant 1*): \_\_\_\_\_%

(ii) PERCENTAGE OF (NEGLIGENCE) (IMPLIED ASSUMPTION OF THE RISK) (*describe other tortious conduct*) OF THE PLAINTIFF: \_\_\_\_\_%

(iii) The percentages attributable to plaintiff and (*insert name of defendant 1*) must equal the total of:

100%

_____	_____
_____	_____
_____	_____
_____	_____

(b) If the percentage attributed to the plaintiff is 50% or less,

(i) move to Interrogatory (J), and all the jurors shall participate in the deliberations, and

(ii) sign the general verdict for the plaintiff.

(c) If the percentage attributable to the plaintiff is greater than 50%,

(i) do not sign Interrogatory (J), and

(ii) sign the general verdicts for the (*insert name of defendant 1*), and

(iii) report to the court that you have completed your deliberations.

(d) If (six) (three-fourths) jurors can not agree on an answer to Interrogatory (I)(3) report this to the court.

(I)(4) STATE THE PERCENTAGES OF NEGLIGENCE OF (*insert name of defendant 1*) AND INTENTIONAL TORTIOUS CONDUCT OF (*insert name of defendant 2*) AND (NEGLIGENCE) (*describe other tortious conduct*) OF (*insert identity of non-party*) THAT WAS A DIRECT AND PROXIMATE CAUSE OF THE PLAINTIFF'S (INJURY) (DAMAGES).

(a) ENTER PERCENTAGES.

(i) PERCENTAGE OF NEGLIGENCE OF (*insert name of defendant 1*): \_\_\_\_\_%

(ii) PERCENTAGE OF INTENTIONAL TORTIOUS CONDUCT OF (*insert name of defendant 2*): \_\_\_\_\_%

(iii) PERCENTAGE OF (NEGLIGENCE) (*describe other tortious conduct*) OF (*insert identity of non-party*): \_\_\_\_\_%

(iv) The percentages attributable to plaintiff and defendants must equal the total of:

100%

_____	_____
-------	-------



_____	_____
_____	_____
_____	_____

(b) move to Interrogatory (J), and all the jurors shall participate in the deliberations, and sign the general verdict for the plaintiff.

(c) If the percentage attributable to the plaintiff is greater than 50%.

(d) If (six) (three-fourths) jurors can not agree on an answer to Interrogatory (I)(4) report this to the court.

(I)(5) STATE THE PERCENTAGES OF NEGLIGENCE OF (*insert name of defendant 1*) AND INTENTIONAL TORTIOUS CONDUCT OF (*insert name of defendant 2*) THAT WAS A DIRECT AND PROXIMATE CAUSE OF THE PLAINTIFF'S (INJURY) (DAMAGES).

(a) ENTER PERCENTAGES.

(i) PERCENTAGE OF NEGLIGENCE OF (*insert name of defendant 1*): \_\_\_\_\_%

(ii) PERCENTAGE OF INTENTIONAL TORTIOUS CONDUCT OF (*insert name of defendant 2*): \_\_\_\_\_%

(iii) The percentages attributable to plaintiff and defendants must equal the total of:

100%

_____	_____
_____	_____
_____	_____
_____	_____

(b) move to Interrogatory (J), and all the jurors shall participate in the deliberations, and

(c) sign the general verdict for the plaintiff.

(d) If (six) (three-fourths) jurors can not agree on an answer to Interrogatory (I)(5) report this to the court.

(I)(6) STATE THE PERCENTAGES OF NEGLIGENCE OF (*insert name of defendant 1*) AND (NEGLIGENCE) (*describe other tortious conduct*) of (*insert identity of non-party*) THAT WAS A DIRECT AND PROXIMATE CAUSE OF THE PLAINTIFF'S (INJURY) (DAMAGES).

(a) ENTER PERCENTAGES.

(i) PERCENTAGE OF NEGLIGENCE OF (*insert name of defendant 1*): \_\_\_\_\_%

(ii) PERCENTAGE OF (NEGLIGENCE) (*describe other tortious conduct*) OF  
(*insert identity of non-party*): \_\_\_\_\_%

(iii) The percentages attributable to (*insert name of defendant 1*) and (*insert identity of non-party*) must equal the total of:

100%

_____	_____
_____	_____
_____	_____
_____	_____

(b) move to Interrogatory (J), and all the jurors shall participate in the deliberations, and

(c) sign the general verdict for the plaintiff.

(d) If (six) (three-fourths) jurors can not agree on an answer to Interrogatory (I)(6) report this to the court.

(I)(7) STATE THE PERCENTAGES OF INTENTIONAL TORTIOUS CONDUCT OF (*insert name of defendant 2*) AND (NEGLIGENCE) (*describe other tortious conduct*) of (*insert identity of non-party*) THAT WAS A DIRECT AND PROXIMATE CAUSE OF THE PLAINTIFF'S (INJURY) (DAMAGES).

(a) ENTER PERCENTAGES.

(i) PERCENTAGE OF INTENTIONAL TORTIOUS CONDUCT OF (*insert name of defendant 2*): \_\_\_\_\_%

(ii) PERCENTAGE OF (NEGLIGENCE) (*describe other tortious conduct*) OF  
(*insert identity of non-party*): \_\_\_\_\_%

(iii) The percentages attributable to (*insert name of defendant 2*) and (*insert identity of non-party*) must equal the total of:

100%

_____	_____
_____	_____
_____	_____
_____	_____

(b) move to Interrogatory (J), and all the jurors shall participate in the deliberations, and

(c) sign the general verdict for the plaintiff.

(d) If (six) (three-fourths) jurors can not agree on an answer to Interrogatory (I)(7) report this to the court.

(J) STATE THE TOTAL AMOUNT OF COMPENSATORY DAMAGES TO THE

PLAINTIFF WITHOUT REGARD TO THE PERCENTAGE OF (NEGLIGENCE) (IMPLIED ASSUMPTION OF THE RISK) (OR BOTH) ATTRIBUTED TO THE PLAINTIFF.

STATE YOUR ANSWER IN  
FIGURES IN INK

\$ \_\_\_\_\_

_____	_____
_____	_____
_____	_____
_____	_____

#### COMMENT

The Committee believes that since the issues relating to damages are analytically different from those relating to causal negligence, the determination of damages may be made by all jurors without regard to their individual votes on causal negligence.

(K) PLEASE STATE THE FOLLOWING:

(1) THE PORTION OF THE COMPENSATORY DAMAGES THAT REPRESENTS ECONOMIC LOSS OF THE PLAINTIFF: \$ \_\_\_\_\_

(2) THE PORTION OF THE COMPENSATORY DAMAGES THAT REPRESENTS NON-ECONOMIC LOSS OF THE PLAINTIFF: \$ \_\_\_\_\_

(3) THE TOTAL AMOUNT OF THE COMPENSATORY DAMAGES SUSTAINED BY THE PLAINTIFF (TOTAL OF "ECONOMIC" AND "NON-ECONOMIC" LOSS): \$ \_\_\_\_\_

_____	_____
_____	_____
_____	_____
_____	_____

#### COMMENT

S.B. 120 requires that the jury distinguish between economic and non-economic damages. The distinction between economic and non-economic damages is significant, as different percentages of each may be recoverable against particular defendants, depending upon the allocation of liability. R.C. 2307.22, 2307.23.

3. COMPENSATORY DAMAGES. "Compensatory damages" include both economic and non-economic loss.



**COMMENT**

When plaintiff's claim for future damages exceeds \$200,000, see OJI-CV 403.05 (claims on and after 1/5/88 but before 4/9/03).

4. ECONOMIC LOSS. R.C. 2307.011(C).
5. NON-ECONOMIC LOSS. R.C. 2307.011(F).
6. GENERAL VERDICT. OJI-CV 403.03 § 4 (claims arising before 1/5/88).

*(Text continued on page 361)*

# Chapter CV 449

## FRAUD

CV 449.01     **Fraud** [Rev. 4/23/22]

CV 449.03     **Caveat emptor in real estate sales** [Rev. 4/23/22]

CV 449.01     **Fraud** [Rev. 4/23/22]

1. GENERAL. The plaintiff claims that the defendant(s) committed (a) fraudulent act(s) against him/her/it upon which he/she/it relied.

### COMMENT

A claim can be made for constructive fraud. "Constructive fraud" is defined as a breach of a legal or equitable duty, which, irrespective of moral guilt of the fraud feisor, the law declares fraudulent, because of its tendency to deceive others, to violate public or private confidence, or to injure public interests. *Cohen v. Estate of Cohen*, 23 Ohio St.3d 90 (1986).

Constructive fraud differs from a claim for fraud in two manners. Constructive fraud does not require proof of fraudulent intent. It does, however, depend on a special confidential or fiduciary relationship, thereby giving rise to a duty to disclose. *Schmitz v. Natl. Collegiate Athletic Assn.*, 8th Dist. Cuyahoga No. 103525, 2016-Ohio-8041. A "fiduciary relationship" is defined as one in which special confidence and trust is reposed in the integrity and fidelity of another and there is a resulting position of superiority or influence, acquired by virtue of this special trust. *Federated Mgt. Co. v. Coopers & Lybrand*, 137 Ohio App.3d 366 (10th Dist. 2000), citing *Ed Schory & Sons, Inc. v. Soc. Natl. Bank*, 75 Ohio St.3d 433 (1996).

See also *Lucarell v. Nationwide Mut. Ins. Co.*, 152 Ohio St.3d 453, 2018-Ohio-15; *APCO Industries v. Braun Constr. Group*, 10th Dist. Franklin No. 19AP-430, 2020-Ohio-4762.

The instructions in this chapter may be modified for use in a claim for constructive fraud with the changes noted in this comment.

2. PROOF OF CLAIM. Before you can find for the plaintiff, you must find by the greater weight of the evidence that

(A) the defendant (represented a fact) (concealed a fact that he/she/it had a duty to disclose); and

(B) that fact was material to the transaction at hand; and

(C) the defendant (represented that fact knowing it was false) (represented that fact

with utter disregard and recklessness as to the truth or falsity of that fact so that the defendant's knowledge of the falsity may be inferred) (concealed a known fact); and (D) the defendant intended to mislead the plaintiff into relying upon the fact as presented; and

(E) the plaintiff justifiably relied upon the fact as presented; and

(F) the (injury) (damage) was (proximately) (directly) caused by the reliance upon the fact as presented.

#### COMMENT

*Burr v. Board of Commrs. of Stark Cty.*, 23 Ohio St.3d 69 (1986); *Gaines v. Preterm-Cleveland, Inc.*, 33 Ohio St.3d 54 (1987).

3. MATERIAL REPRESENTATION. The (representation) (concealment) must be definite and (important) (necessary) (influential) to the transaction. It must be so substantial and important that it influenced the plaintiff (to whom it was made) (from whom it was concealed). The (representation) (concealment) must be based on a present or past fact.

#### COMMENT

Drawn from *J.B. Colt Co. v. Wasson*, 15 Ohio App. 484 (9th Dist. Wayne 1922).

#### 4. DUTY TO DISCLOSE.

#### COMMENT

The Committee believes the existence of a duty to disclose depends on the existence of a relationship of trust and confidence, which in turn may be a question of fact in some situations and a question of law in other situations. The variety of duty to disclose situations is such that it is not feasible to create pattern instructions. If a person has a duty to disclose, that person must make a full and fair disclosure of the material facts. A partial disclosure is a concealment and may be fraud. *Klasa v. Rogers*, 8th Dist. Cuyahoga No. 83374; 2004-Ohio-4490.

5. FALSE. A representation is "false" when it is not substantially true. The truth or falsity of a representation depends on the natural and obvious meanings of the words taking into consideration all of the surrounding facts and circumstances in evidence.

#### COMMENT

*Austin v. Kluczarov Constr.*, 9th Dist. Medina No. 02CA0103-M, 2004 Ohio 593;



*Nolan v. Conseco Health Ins. Co.*, 7th Dist. Jefferson Nos. 07 JE 30 and 07 JE 31.  
2008-Ohio-3332.

6. **KNOWLEDGE.** “Knowledge” means that the defendant is aware of the existence of the fact and that his/her/its acts will probably (cause a certain result) (be of a certain nature). The defendant acts with knowledge when he/she/it is aware that his/her/its (representation) (concealment) will (probably cause a certain result) (probably be of a certain nature). Because you cannot look into the mind of another, knowledge is determined from all of the facts and circumstances in evidence.

**COMMENT**

Drawn from R.C. 2901.22(B).

7. **RECKLESS.** A representation or omission is “reckless” when the person who makes the representation or omission is (totally) (completely) careless or indifferent to the consequences or the risk that the representation or omission will cause the person to whom it is made to do or not do certain things. If a person had no knowledge of a fact but asserted the fact as true when false, you may find that he/she/it made the representation with utter disregard and recklessness. A representation recklessly made without knowledge of the truth is the same as a false representation knowingly made.

**COMMENT**

Drawn from *Pumphrey v. Quillen*, 165 Ohio St. 343 (1956); R.C. 2901.22(C).

8. **INTENT TO MISLEAD.** A defendant’s intent is known only to himself/herself/itself unless he/she/it expresses it to others or indicates it by his/her/its conduct. Intent is determined from the way in which (the representation is made) (the fact[s] is/are concealed), the means used, and all the facts and circumstances in evidence.

**COMMENT**

Drawn from R.C. 2901.22(A).

9. **JUSTIFIABLE RELIANCE.** “Justifiable reliance” exists when a (representation) (concealment) of fact(s) (was) (were) made when a person of ordinary care would rely on it under the same or similar circumstances to his/her/its detriment. In determining whether reliance is justifiable you may consider the nature of the transaction, the form and materiality of the representation, the relationship of the parties, the respective intelligence, experience, age, and mental and physical condition of the parties and their respective knowledge and means of knowledge.

**COMMENT**

Drawn from *Mussivand v. David*, 45 Ohio St.3d 314 (1989); *Feliciano v. Moore*, 64 Ohio App.2d 236 (10th Dist. 1979).

10. EXPRESSIONS OF OPINION (ADDITIONAL). Expressions of opinion, even though false, are not a basis for fraud.

**COMMENT**

If there is a confidential or fiduciary relationship, such expressions, if known to be false, can be fraudulent. *Smith v. Patterson*, 33 Ohio St. 70 (1877); *Day, v. A Hearth & Barbeque Shoppe*, 9th Dist. Lorain No. 3461 (Sept. 28, 1983).

11. OPINION OF LAW (ADDITIONAL). Everyone is presumed to know the law and representations as to the law are mere opinions and not fraud.

**COMMENT**

Drawn from *Armatas v. Haws*, 5th Dist. Stark No. 2017CA00186, 2018-Ohio-1371. A fiduciary relationship can make misrepresentations of law grounds for fraud. *Armatas, supra*.

12. PROFESSIONAL EXPRESSIONS OF OPINION (ADDITIONAL). Ordinarily, professional expressions of opinion, even though false, do not constitute fraud. However, where one is employed to give advice on matters within the scope of his/her/its professional capacity, he/she/it commits fraud if he/she/it expresses an opinion that he/she/it knows to be false or which is given with utter disregard and recklessness as to its falsity.

**COMMENT**

Drawn from *Gaines v. Preterm-Cleveland, Inc.*, 33 Ohio St. 3d 54 (1987).

13. PUFFING (ADDITIONAL). Puffing is (a) boastful assertion(s) or (an) exaggerated (description([s])) (opinion([s])) (claim([s])) and is not a false representation(s) of fact(s) that would constitute fraud.

**COMMENT**

Drawn from *Davis v. Byers Volvo*, 4th Dist., Pike No. 11CA817, 2012-Ohio-882;

Blacks Law Dictionary, (11th Ed. 2019).

14. BURDEN OF PROOF. OJI-CV 303.03.

**COMMENT**

The degree of proof necessary to show fraud in a civil action for money damages is a preponderance of the evidence. *Household Finance Corp. v. Altenberg*, 5 Ohio St.2d 190 (1966); *Manning v. Len Immke Buick, Inc.*, 28 Ohio App.2d 203 (10th Dist. 1971).

The degree of proof on contracts within the statute of frauds or to set aside a document for fraud is clear and convincing evidence. *Cross v. Ledford*, 161 Ohio St. 469 (1954). See OJI-CV 303.07.

15. PREPONDERANCE OF EVIDENCE. OJI-CV 303.05.

16. CLEAR AND CONVINCING EVIDENCE. OJI-CV 303.07.

17. AFFIRMATIVE DEFENSES:

(A) GENERAL. OJI-CV 303.03 § 4.

(B) FAILURE TO INVESTIGATE. The defendant claims that the plaintiff had a duty to investigate and was not justified in relying on the representation or failure to disclose. When a person had the opportunity to (investigate) (inspect) (inquire) and when the circumstances would have caused a person of ordinary care to (investigate) (inspect) (inquire) and he/she/it failed to do so, the element of justifiable reliance has not been proved, and the plaintiff cannot recover.

**COMMENT**

Drawn from *Tipton v. Nuzum*, 84 Ohio App.3d 33 (9th Dist. Summit 1992).

(C) RELIANCE ON OWN INVESTIGATION. If the plaintiff investigated the facts (represented) (concealed) and relied on this investigation and did not rely on facts (represented) (concealed), then the plaintiff is not entitled to recover.

**COMMENT**

Drawn from *Oaks v. Aller*, 7 Ohio App.2d 72 (3d Dist. Hancock No. 654, 1964).

(D) MISREPRESENTATIONS CAUSED FAILURE. If misrepresentations were made by the defendant with an intention to deceive or mislead the plaintiff, causing him/her/it to (fail to make) (refrain from making) an (investigation) (inspection) (inquiry) which in the use of ordinary care he/she/it would have made, there is no



duty to (investigate) (inspect) (inquire) and the plaintiff may justifiably rely on the defendant's misrepresentations.

#### COMMENT

Drawn from *Long v. Rice*, 11th Dist. Ashtabula No. 2012-A-0056, 2013-Ohio-2402.

For duty to inspect in regard to real estate, see *Caveat Emptor in Real Estate Sales*, OJI-CV 449.03.

18. CONCLUSION. OJI-CV Chapter 313.
19. CONCLUSION WITH AFFIRMATIVE DEFENSE. OJI-CV Chapter 313.
20. PROXIMATE CAUSE. OJI-CV Chapter 405.
21. DAMAGES. OJI-CV Chapter 315.

#### CV 449.03 Caveat emptor in real estate sales [Rev. 4/23/22]

#### COMMENT

The following instructions are intended for structural defects in a house or building. If the defect is in the title or the land, these instructions are not applicable.

These instructions are drawn from *Layman v. Binns*, 35 Ohio St.3d 176 (1988). The doctrine of caveat emptor does not apply when specific representations about a material fact are made by the seller, or when the defects are not open and could not have been discovered on reasonable inspection. *Brewer v. Brothers*, 82 Ohio App. 3d 148 (12th Dist. 1992 Warren No. CA91-11-091).

The doctrine of caveat emptor may defeat a claim of fraudulent or negligent concealment if the residence is sold "as is," without the buyer having a 14-day inspection period, and if the observable and discoverable conditions would put a reasonable person on notice of a possible defect. *Tipton v. Nuzum*, 84 Ohio App.3d 33 (9th Dist.1992).

The existence of an "as-is" clause does not overcome the ability of buyers to justifiably rely on representations made by sellers regarding defects. The "as-is" clause bars an action for "passive nondisclosure" but does not shield a seller from an "active" fraud such as a misrepresentation or fraudulent concealment. An "as-is" clause cannot be used to bar a claim for fraudulent misrepresentation or fraudulent concealment. While a seller may not have a duty to disclose a defective condition, the seller may not affirmatively misrepresent or conceal the condition. *Shannon v. Fischer*, 12th Dist. Clermont No. CA2020-05-022, 2020-Ohio-5567.

R.C. 5302.30 requires a transferor of residential real estate with one to four dwelling units to disclose in writing material defects actually known to the transferor without regard to observability or discoverability. Sections (J) and (L) state that the statute shall not bar the transferor's defenses or affect the transferee's

common law remedies.

1. GENERAL. The (buyer) (plaintiff) claims that the (seller) (defendant)

*(Use appropriate alternative[s])*

(A) (concealed);

*(or)*

(B) (misrepresented);

*(or)*

(C) (failed to disclose a material fact relating to)

a/the (structural defect in) (condition of) the (house) (building).

2. PROOF OF CLAIM. Before you can find for the (buyer) (plaintiff), you must find by the greater weight of the evidence all of the following:

(A) the (seller) (defendant)

*(Use appropriate alternative[s])*

(1) concealed a/the (structural defect in) (condition of) the (house) (building); and

*(or)*

(2) misrepresented a/the (structural defect in) (condition of) the (house) (building); and

*(or)*

(3) failed to disclose a material fact relating to a/the (structural defect in) (condition of) the (house) (building) not readily observable or discoverable upon reasonable inspection; and

(B) the (concealment) (misrepresentation) (failure to disclose) was material to the transaction at hand; and

(C) the

*(Use appropriate alternative[s])*

(1) concealment was made with knowledge of the condition or with such utter disregard and recklessness that knowledge may be inferred; and

*(or)*

(2) representation was made with knowledge of its falsity or with such utter disregard and recklessness that knowledge may be inferred; and

*(or)*

(3) failure to disclose was made with knowledge of the condition not disclosed or with such utter disregard and recklessness that knowledge may be inferred; and

- (D) the (seller) (defendant) intended to mislead the (buyer) (plaintiff); and
- (E) there was justifiable reliance upon the (concealment) (misrepresentation) (failure to disclose); and
- (F) the (injury) (damage) was proximately caused by the reliance.

**COMMENT**

Drawn from *Kramer v. Raterman*, 1st Dist. Hamilton No. C-040344, 2005-Ohio-2742; *Brewer v. Brothers*, 82 Ohio App. 3d 148 (12th Dist. 1992 Warren No. CA91-11-091); *Burr v. Board of Commrs. of Stark Cty.*, 23 Ohio St.3d 69 (1986); *Gaines v. Preterm-Cleveland, Inc.*, 33 Ohio St.3d 54 (1987).

3. MATERIAL TO THE TRANSACTION. The (concealment) (misrepresentation) (failure to disclose) must be definite and (important) (necessary) (influential) to the transaction. It must be so substantial and important that it influenced the (buyer) (plaintiff). The (concealment) (misrepresentation) (failure to disclose) must be based upon facts existing at the time of the transaction.

**COMMENT**

Drawn from *J.B. Colt Co. v. Wasson*, 15 Ohio App. 484 (9th Dist. Wayne 1922).

4. DUTY TO DISCLOSE.

**COMMENT**

R.C. 5302.30 requires sellers to disclose patent or latent defects that are within their actual knowledge and complete a residential property disclosure form ("RPDF") in good faith, but if a buyer has the opportunity to inspect the property, he/she/it is charged with the knowledge of conditions that a reasonable inspection would disclose unless the seller has made specific representations about a material fact, or when the defects are not open and could not have been discovered on reasonable inspection. *Brewer v. Brothers*, 82 Ohio App. 3d 148 (12th Dist. 1992 Warren No. CA91-11-091). Sellers are not required to inspect their property or acquire knowledge regarding defects. The duty of a full inspection is the buyer's and the RPDF is not a substitute for a careful inspection. An "as is" clause relieves the seller of the duty to disclose latent defects and precludes a claim against a seller based on "passive nondisclosure." It does not protect a seller from positive acts of fraud, such as fraudulent misrepresentation or fraudulent concealment, including fraudulent misrepresentations in a RPDF. An "as is" clause is inapplicable if the RPDF contains misrepresentations.

Drawn from *Mobley v. James*, 8th Dist. No. 108470, 2020-Ohio-380.

5. FALSE. A representation is "false" when it is not substantially true. The truth or



falsity of a representation depends on the natural and obvious meanings of the words taking into consideration all of the surrounding facts and circumstances in evidence.

**COMMENT**

*Austin v. Kluczarov Constr.*, 9th Dist. Medina No. 02CA0103-M, 2004-Ohio-593;  
*Nolan v. Conseco Health Insurance Co.*, 7th Dist. Jefferson Nos. 07 JE 30, 07 JE 31, 2008-Ohio-3332.

6. **KNOWLEDGE.** “Knowledge” means that the defendant is aware of the existence of the facts and that his/her/its acts will probably (cause a certain result) (be of a certain nature). The defendant acts with knowledge when he/she/it is aware that his/her/its (concealment) (misrepresentation) (failure to disclose) will probably (cause a certain result) (be of a certain nature). Since you cannot look into the mind of another, knowledge is determined from all of the facts and circumstances in evidence.

**COMMENT**

Drawn from R.C. 2901.22(C).

7. **RECKLESS.** An action is “reckless” when the person who (conceals) (misrepresents) (fails to disclose) is (totally) (completely) careless or indifferent to the consequences or the risk that the (concealment) (misrepresentation) (failure to disclose) will cause the person to whom it is made to do or not do certain things. (If a person has knowledge of a fact but asserted it as true when false, you may find that he/she/it made the representation with utter disregard and recklessness.)

**COMMENT**

Drawn from *Pumphrey v. Quillen*, 165 Ohio St. 343 (1956); R.C. 2901.22(C).

8. **INTENT TO MISLEAD.** A (seller’s) (defendant’s) intent is known only to himself/herself/itself unless he/she/it expresses it to others or indicates it by his/her/its conduct. Intent is determined from the way in which (the fact[s] is/are concealed) (the representation is made) (the fact[s] is/are not disclosed) the means used and all the facts and circumstances in evidence.

**COMMENT**

Drawn from R.C. 2901.22(A).

9. **JUSTIFIABLE RELIANCE.** “Justifiable reliance” exists when a person of ordinary

care would rely on the facts presented under the same or similar circumstances to his/her/its detriment. In determining whether reliance is justifiable you may consider the nature of the transaction, the form and materiality of the representation, concealment, or non-disclosure, the relationship of the parties, the respective intelligence, experience, age, and mental and physical condition of the parties and their respective knowledge and means of knowledge.

#### COMMENT

Drawn from *Mussivand v. David*, 45 Ohio St.3d 314 (1989); *Feliciano v. Moore*, 64 Ohio App.2d 236 (10th Dist. 1979).

### 10. BURDEN OF PROOF. OJI-CV 303.03.

#### COMMENT

The degree of proof necessary to show fraud in a civil action for money damages is a preponderance of the evidence. *Household Finance Corp. v. Altenberg*, 5 Ohio St. 2d 190 (1966); *Manning v. Len Immke Buick, Inc.*, 28 Ohio App.2d 203 (1971).

The degree of proof on contracts within the statute of frauds or to set aside a document for fraud is clear and convincing evidence. *Cross v. Ledford*, 161 Ohio St. 469 (1954). See OJI-CV 303.07.

### 11. PREPONDERANCE OF EVIDENCE. OJI-CV 303.05.

#### COMMENT

The degree of proof necessary to show fraud in a civil action for money damages is a preponderance of the evidence. *Household Finance Corp. v. Altenberg*, 5 Ohio St.2d 190 (1966).

### 12. CLEAR AND CONVINCING EVIDENCE. OJI-CV 303.07.

### 13. AFFIRMATIVE DEFENSES:

#### (A) GENERAL. OJI-CV 303.03 § 4.

(B) DEFENSE OF CAVEAT EMPTOR. The (seller) (defendant) claims that the conduct was not fraudulent, that the defect could have been observed or discovered, and that the (seller) (defendant) did nothing to interfere with the (buyer's) (plaintiff's) opportunity to inspect the (house) (building). In order to find for the (seller) (defendant), you must find by the greater weight of the evidence the following:

#### (1) the (seller) (defendant)

*(Use appropriate alternative[s])*

(a) did not conceal a/the (structural defect in) (condition of) the (house) (building);

*(or)*

(b) did not misrepresent a/the (structural defect in) (condition of) the (house) (building);

*(or)*

(c) did not fail to disclose a material fact relating to a/the (structural defect in) (condition of) the (house) (building) not readily observable or discoverable upon reasonable inspection;

(2) or

*(Use appropriate alternative[s])*

(a) the concealment was not made with knowledge of the condition or with such utter disregard and recklessness that knowledge may be inferred;

*(or)*

(b) the representation was not made with knowledge of its falsity or with such utter disregard and recklessness that knowledge may be inferred;

*(or)*

(c) the failure to disclose was not made with knowledge of the condition not disclosed or with such utter disregard and recklessness that knowledge may be inferred.

(C) FAILURE TO INVESTIGATE. The (seller) (defendant) claims that the (buyer) (plaintiff) had a duty to investigate and was not justified in relying on the representation or failure to disclose. When a person had the opportunity to (investigate) (inspect) (inquire) and when the circumstances would have caused a person of ordinary care to (investigate) (inspect) (inquire) and he/she/it failed to do so, the element of justifiable reliance has not been proven, and the (buyer) (plaintiff) cannot recover.

#### COMMENT

Drawn from *Tipton v. Nuzum*, 84 Ohio App.3d 33 (9th Dist. Summit 1992).

(D) RELIANCE ON OWN INVESTIGATION. If the (buyer) (plaintiff) investigated the facts (concealed) (represented) (not disclosed) and relied on this investigation and did not rely on facts (concealed) (represented) (not disclosed), then the (buyer) (plaintiff) is not entitled to recover.



**COMMENT**

Drawn from *Oaks v. Aller*, 7 Ohio App.2d 72 (3d Dist. Hancock No. 654,1964).

(E) **MISREPRESENTATION CAUSED FAILURE.** If representations were made by the (seller) (defendant) with an intention to deceive or mislead the (buyer) (plaintiff), causing him/her/it to (fail to make) (refrain from making) an (investigation) (inspection) (inquiry) which in the use of ordinary care he/she/it would have made, there is no duty to (investigate) (inspect) (inquire) and the (buyer) (plaintiff) may justifiably rely on the (seller's) (defendant's) representations.

**COMMENT**

Drawn from *Long v. Rice*, 11th Dist. Ashtabula No. 2012-A-0056, 2013-Ohio-2402; *Brewer v. Brothers*, 82 Ohio App. 3d 148 (12th Dist. 1992 Warren No. CA91-11-091).

14. **CONCLUSION.** OJI-CV Chapter 313.
15. **CONCLUSION WITH AFFIRMATIVE DEFENSE.** OJI-CV Chapter 313.
16. **PROXIMATE CAUSE.** OJI-CV Chapter 405.
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[References are to civil (CV) and criminal (CR) instruction numbers.]

**RICO offenses**

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- Conducting or participating in affairs of enterprise . . . CV 445.03
- Conspiracy to engage in pattern of corrupt activity or collection of unlawful debt . . . CV 445.21
- Use or investment of proceeds in acquisition of real property, or establishment or operation of enterprise . . . CV 445.15

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- Conducting or participating in affairs of enterprise . . . CV 445.07
- Conspiracy to engage in pattern of corrupt activity or collection of unlawful debt . . . CV 445.25
- Use or investment of proceeds in acquisition of real property, or establishment or operation of enterprise . . . CV 445.19

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[References are to civil (CV) and criminal (CR) instruction numbers.]

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Conclusions

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        Without plaintiff negligence . . . CV 406.03

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[References are to civil (CV) and criminal (CR) instruction numbers.]

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Not required . . . CV 403.01

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[References are to civil (CV) and criminal (CR) instruction numbers.]

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[References are to civil (CV) and criminal (CR) instruction numbers.]

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- RICO offenses
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  - Conspiracy to engage in pattern of corrupt activity or collection of unlawful debt . . . CV 445.25
  - Use or investment of proceeds in acquisition of real property, or establishment or operation of enterprise . . . CV 445.19
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- Separate claims, joint trial of . . . CV 315.31
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[References are to civil (CV) and criminal (CR) instruction numbers.]

## DAMAGING OR ENDANGERING

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[References are to civil (CV) and criminal (CR) instruction numbers.]

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#### **DELIVERY OF INSTRUCTIONS (GENERALLY)**

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#### **DEPRIVING OF PROPERTY**

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#### **DERELICTION OF DUTY**

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 Judicial officers . . . CR 521.44(B)  
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#### **DESECRATION**

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#### **DIRECT EVIDENCE**

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#### **DISABLED PERSONS AND DISABILITIES**

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 Blind persons, failure to yield right of way to . . . CV 411.63  
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#### **DISCHARGE OF JURY**

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   Reasonable accommodation . . . CV 533.11  
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#### **DISORDERLY CONDUCT**

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[References are to civil (CV) and criminal (CR) instruction numbers.]

## DISPUTED ISSUES

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## DOMESTIC VIOLENCE

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## DRIVER'S LICENSE OFFENSES

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micide . . . CR 421.11  
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[References are to civil (CV) and criminal (CR) instruction numbers.]

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     Non-controlled substances . . . CR 525.09(A)  
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     Prohibited alcohol or drug concentration, operating with . . . CR 711.19(A)(1)(b)-(j)  
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     Operating vessel under influence of alcohol or drugs . . . CR 547.11(A)(1)  
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     Potential use considerations . . . CV 609.07  
     Special use property, valuation of . . . CV 609.19  
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 Discrimination (See DISCRIMINATION, EMPLOYMENT)  
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 Physical injuries to employees; employer intentional tort . . . CV 537.09  
 Sexual harassment  
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[References are to civil (CV) and criminal (CR) instruction numbers.]

## Torts

- Employee injury, disease, condition, or death . . . CV 537.09
- Intentional torts . . . CV 537.09
- Interference with employment relations, tortious . . . CV 453.05
- Physical injuries to employees . . . CV 537.09
- Third parties, liability to . . . CV 537.07
- Wrongful discharge as public policy tort . . . CV 537.17
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## EVICITION, RESIDENTIAL

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- Mobile home parks (See MOBILE HOME PARKS)
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- Acts of witnesses, weighing of testimony on . . . CR 409.33
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- Clear and convincing . . . CV 303.07
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- Custodial interrogation of defendant . . . CR 409.09
- Defined . . . CR 409.01; CV 305.01
- Depositions . . . CR 409.27; CV 309.07
- Destruction of . . . CV 437.01
- Direct evidence defined . . . CR 409.01; CV 305.01

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- Sample final instruction . . . CV 207.09
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- Expert testimony (See EXPERT WITNESSES)
- Eyewitness testimony, credibility of . . . CR 409.05; CV 305.05
- Guilt, consciousness of . . . CR 409.13
- Interpreters and translators
  - Civil trials, in . . . CV 301.13
  - Criminal trials, in . . . CR 401.29
- Interrogation of defendant . . . CR 409.09
- Layman's opinion . . . CR 409.19; CV 309.09
- Limited purpose evidence; instructions during trial . . . CR 401.23; CV 309.05
- Multiple defendants, evidence from . . . CR 409.15
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- Prima facie evidence (See PRIMA FACIE EVIDENCE)
- Prior convictions and acts
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  - Trial, instructions during . . . CR 401.25; CR 409.11
- Sample instructions
  - Evidence and references, sample final instruction for . . . CV 207.07
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- Tampering with . . . CR 521.12
- Testimony (See TESTIMONY)
- Transcripts . . . CR 409.27; CV 309.07
- Translators, interpreters and
  - Civil trials, in . . . CV 301.13
  - Criminal trials, in . . . CR 401.29
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- Generally . . . CR 409.25
- Sample final instructions . . . CR 207.07

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- Offenses related to . . . CR 551.13

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- Paternity claim, serological tests in . . . CV 705.07
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## EXPLOSIVE DEVICES

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- Possession . . . CR 509.26

[References are to civil (CV) and criminal (CR) instruction numbers.]

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### **FAILURE TO REPORT CRIME**

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### **FALSE LIGHT**

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[References are to civil (CV) and criminal (CR) instruction numbers.]

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 Dereliction of duty by law enforcement officers . . . CR 521.44(A); CR 521.44(B)  
 Discharge of firearm at peace officer or correction officer specification . . . CR 541.1412  
 Failure to obey order of police officer  
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   Traffic offenses . . . CV 411.03  
 Impersonation of officer (See IMPERSONATION OF OFFICER)  
 Invested with authority defined . . . CR 521.331  
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## **FIREARMS**

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   Furnishing to minors . . . CR 523.21  
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 Three year . . . CR 541.145  
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## **FLAG BURNING**

Generally . . . CR 527.11

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[References are to civil (CV) and criminal (CR) instruction numbers.]

### Securities claims

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- Sales fraud, liability of seller for . . . CV 541.01
- Simulation, criminal . . . CR 513.32
- Slugs, making or using . . . CR 513.33
- Special property, value and . . . CR 425.23
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